

Tab 1	SB 294 by Wright (CO-INTRODUCERS) Baxley; (Identical to H 00167) Crimes Against Veterans						
Tab 2	SB 544 by Harrell; (Identical to H 00375) Husband-wife Communications Privilege						
351250	A	S	RCS	CJ, Harrell	Delete L.16 - 19:	01/14 05:58 PM	
Tab 3	SB 700 by Perry (CO-INTRODUCERS) Pizzo, Braynon, Harrell, Gruters; (Identical to H 00615) Juvenile Diversion Program Expunction						
787556	A	S	WD	CJ, Perry	Delete L.21 - 41:	01/14 01:46 PM	
881846	A	S	RCS	CJ, Perry	Delete L.41:	01/14 05:58 PM	
Tab 4	SB 846 by Simmons; (Compare to H 00461) Costs of Prosecution and Investigation						
532144	A	S	RCS	CJ, Simmons	Delete L.27:	01/14 05:58 PM	
Tab 5	SB 852 by Pizzo; (Identical to H 01259) Restrictive Housing for Incarcerated Pregnant Women						
203040	D	S	RCS	CJ, Pizzo	Delete everything after	01/14 05:58 PM	
Tab 6	SB 872 by Perry; (Compare to H 00893) Public Records/Commissioners and Specified Personnel/School Administrators						
231474	A	S	RCS	CJ, Perry	Delete L.293 - 386:	01/14 05:58 PM	
Tab 7	SB 884 by Hooper (CO-INTRODUCERS) Perry; (Similar to H 00453) Law Enforcement and Correctional Officers						
Tab 8	SB 888 by Perry; (Identical to H 00625) Public Nuisances						
Tab 9	SB 1056 by Simpson; (Identical to H 00681) PACE Center for Girls						
569194	A	S	RCS	CJ, Simpson	Delete L.14 - 18:	01/14 05:58 PM	
Tab 10	SB 1292 by Perry; (Identical to H 01173) Public Records/Nonjudicial Arrest Record of a Minor						
Tab 11	SPB 7036 by CJ; OGSR/Criminal Intelligence Information/Criminal Investigative Information						
Tab 12	SPB 7032 by CJ; OGSR/Body Camera Recordings Obtained by Law Enforcement Officers						
Tab 13	SPB 7034 by CJ; OGSR/Location Information						
Tab 14	SPB 7038 by CJ; OGSR/Information Held by an Investigative Agency						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Perry, Chair
Senator Brandes, Vice Chair

MEETING DATE: Tuesday, January 14, 2020
TIME: 2:30—4:30 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 294 Wright (Identical H 167)	Crimes Against Veterans; Citing this act as the "Florida Veterans Protection Act"; providing an enhanced sentence for any person who commits aggravated white collar crimes against a certain number of veterans by obtaining or attempting to obtain a specified amount of money; providing criminal penalties, etc. MS 11/13/2019 Favorable CJ 01/14/2020 Favorable RC	Favorable Yeas 4 Nays 0
2	SB 544 Harrell (Identical H 375)	Husband-wife Communications Privilege; Providing that the privilege for husband-wife communications does not apply in certain civil or criminal proceedings involving child victims, to the extent that the communications concern certain conduct, etc. JU 11/12/2019 Favorable CJ 01/14/2020 Fav/CS RC	Fav/CS Yeas 4 Nays 0
3	SB 700 Perry (Identical H 615, Compare H 1173, Linked S 1292)	Juvenile Diversion Program Expunction; Deleting a requirement that limits diversion program expunction to programs for misdemeanor offenses, etc. CJ 01/14/2020 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 0
4	SB 846 Simmons (Compare H 461)	Costs of Prosecution and Investigation; Prohibiting the inclusion in negotiated plea agreements of costs for the state attorney which are greater than the minimum required, etc. CJ 01/14/2020 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, January 14, 2020, 2:30—4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 852 Pizzo (Identical H 1259, Compare S 854)	Restrictive Housing for Incarcerated Pregnant Women; Prohibiting the involuntary placement of pregnant prisoners in restrictive housing; providing exceptions; requiring corrections officials to write a specified report if an extraordinary circumstance necessitates placing a pregnant prisoner in restrictive housing; providing requirements for the treatment of pregnant prisoners placed in restrictive housing, etc. CJ 01/14/2020 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
6	SB 872 Perry (Compare H 893)	Public Records/Commissioners and Specified Personnel/School Administrators; Providing an exemption from public records requirements for the personal identifying and location information of current and former commissioners and specified commission personnel of the Florida Commission on Offender Review and the names and personal identifying and location information of the spouses and children of such personnel; providing an exemption from public records requirements for the personal identifying and location information of school administrators and the names and personal identifying and location information of the spouses and children of school administrators; providing for future review and repeal of the exemption; providing statements of public necessity, etc. CJ 01/14/2020 Fav/CS GO RC	Fav/CS Yeas 4 Nays 0
7	SB 884 Hooper (Similar H 453)	Law Enforcement and Correctional Officers; Revising the definitions of "correctional officer" and "law enforcement officer" to include persons employed on a part-time basis; authorizing an agency to take disciplinary action against a correctional officer or law enforcement officer accused of misconduct within a specified timeframe, regardless of the allegation's origin; authorizing an officer to bring an action for injunctive relief if a law enforcement or correctional agency fails to comply with certain requirements of part VI of ch. 112, F.S., etc. CJ 01/14/2020 Favorable ACJ AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, January 14, 2020, 2:30—4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 888 Perry (Identical H 625)	Public Nuisances; Revising notice requirements for the filing of temporary injunctions relating to the enjoinder of certain nuisances; declaring that the use of a location by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity is a public nuisance; declaring that any place or premises that has been used on more than two occasions during a certain period as the site of any combination of specified violations is a nuisance and may be abated pursuant to specified procedures, etc. CJ 01/14/2020 Favorable CA RC	Favorable Yeas 4 Nays 0
9	SB 1056 Simpson (Identical H 681)	PACE Center for Girls; Authorizing the Department of Juvenile Justice to contract with the PACE Center for Girls for specified services, etc. CJ 01/14/2020 Fav/CS AP	Fav/CS Yeas 5 Nays 0
10	SB 1292 Perry (Identical H 1173, Compare H 615, Linked S 700)	Public Records/Nonjudicial Arrest Record of a Minor; Providing an exemption from public records requirements for a nonjudicial record of the arrest of a minor who has successfully completed a diversion program; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CJ 01/14/2020 Favorable GO RC	Favorable Yeas 4 Nays 0
Consideration of proposed bill:			
11	SPB 7036	OGSR/Criminal Intelligence Information/Criminal Investigative Information; Abrogating the scheduled repeals of provisions relating to specified criminal intelligence information or criminal investigative information, etc.	Submitted and Reported Favorably as Committee Bill Yeas 4 Nays 0
Consideration of proposed bill:			
12	SPB 7032	OGSR/Body Camera Recordings Obtained by Law Enforcement Officers; Amending a provision which provides an exemption from public records requirements for body camera recordings obtained by law enforcement officers under certain circumstances; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 3 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, January 14, 2020, 2:30—4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed bill:			
13	SPB 7034	OGSR/Location Information; Abrogating the scheduled repeal of provisions relating to location information of specified places that serve child victims of commercial sexual exploitation; abrogating the scheduled repeal of provisions relating to location information of residential facilities that offer services for certain victims of human trafficking, etc.	Submitted and Reported Favorably as Committee Bill Yeas 4 Nays 0
Consideration of proposed bill:			
14	SPB 7038	OGSR/Information Held by an Investigative Agency; Amending a provision relating to an exemption from public records requirements for information held by an investigative agency pursuant to an investigation relating to an activity prohibited under the Florida RICO Act; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 4 Nays 0
Other Related Meeting Documents			

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 Criminal Justice

BILL: SB 294

INTRODUCER: Senators Wright and Baxley

SUBJECT: Crimes Against Veterans

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	Favorable
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 294 creates the “Florida Veterans Protection Act,” which amends the “White Collar Crime Victim Protection Act” to punish a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes 10 or more veterans. The commission of this act is a first degree felony ranked in level 9 of the offense severity ranking chart of the Criminal Punishment Code (Code). Additionally, a person convicted of an aggravated white collar crime may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater. This person is also liable for all court costs and must make restitution to each victim of the crime.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact, meaning an increase of 10 or fewer prison beds. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Veterans and Fraud

According to the Federal Trade Commission, in 2018, Florida ranked first in the nation in fraud and fourth in the nation in identity theft.¹ Although veterans are less than 10 percent of the

¹ *Consumer Sentinel Network Data Book 2018* (Feb. 2019), pp. 4, 20-21, Federal Trade Commission, , available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf (last visited on Dec. 17, 2019). There were 210,174 fraud reports (1,002 per 100K population) and 37,797 identity theft reports (180 per 100,000 population). *Id.* at pp. 20-21.

population in the United States, they represent one-third of the victims of investment fraud.² Data provided from the Federal Trade Commission’s Consumer Sentinel program, the largest repository of fraud complaints in the nation, reveals an increase by 63 percent of complaints filed by military veterans over the past five years.³

In a 2017 survey conducted by the American Association of Retired Persons (AARP), researchers reported that of those surveyed, during the five years prior, twice as many veterans as nonveterans lost money to fraudulent scams (16 percent veterans to 8 percent non-veterans).⁴ And nearly 8 in 10 veterans (78 percent) reported having received a scam attempt in the last five years that was seeking to take advantage of their status as a military veteran.⁵

Statutory Definition of “Veteran”

A “veteran” is defined in s. 1.01, F.S., as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later was upgraded to a discharge under honorable conditions, regardless of a designation by the United States Department of Veterans Affairs as an other than honorable discharge or release.⁶

White Collar Crime Victims Protection Act

Section 775.0844, F.S., the “White Collar Crime Victims Protection Act” (Act), punishes a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes:

- 10 or more elderly persons, as defined in s. 825.101, F.S.;⁷
- 20 or more persons as defined in s. 1.01, F.S.;⁸ or
- The State of Florida, any state agency, any of the state’s political subdivisions, or any agency of the state’s political subdivisions.⁹

The Act defines a “white collar crime” as any of the following offenses:

- The commission of, or a conspiracy to commit, any felony offense specified in:
 - Ch. 560, F.S., relating to the Money Transmitters’ Code.
 - Ch. 812, F.S., relating to theft, robbery, and related crimes.
 - Ch. 815, F.S., relating to computer-related crimes.

² *Under Fire: Military Veterans and Consumer Fraud in the United States* (Nov. 2017), p. 2, AARP Washington State, available at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2017/military-veterans-consumer-fraud.doi.10.26419%252Fres.00182.001.pdf (last visited on Dec. 17, 2019).

³ *Id.*

⁴ *Id.* at p. 3.

⁵ “Examples include improving your VA loan, taking advantage of a little-known government program[s] for vets or paying for a back, knee, or arm brace because of one’s military service.” *Id.* at p. 3.

⁶ Section 1.01(14), F.S.

⁷ Section 825.101(4), F.S., defines an “elderly person” as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.

⁸ Section 1.01(3), F.S., provides that the word “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

⁹ Section 775.0844(5), F.S.

- Ch. 817, F.S., relating to fraudulent practices.
- Ch. 825, F.S., relating to abuse, neglect, and exploitation of elderly persons and disabled adults.
- Ch. 831, F.S., relating to forgery and counterfeiting.
- Ch. 832, F.S., relating to the issuance of worthless checks and drafts.
- Ch. 838, F.S., relating to bribery and misuse of public office.
- Ch. 839, F.S., relating to offenses by public officers and employees.
- Ch. 895, F.S., relating to offenses concerning racketeering and illegal debts.
- Ch. 896, F.S., relating to offenses related to financial transactions.
- A felony offense that is committed with intent to defraud or that involves a conspiracy to defraud.
- A felony offense that is committed with intent to temporarily or permanently deprive a person of his or her property or that involves a conspiracy to temporarily or permanently deprive a person of his or her property.
- A felony offense that involves or results in the commission of fraud or deceit upon a person or that involves a conspiracy to commit fraud or deceit upon a person.¹⁰

The Act defines an “aggravated white collar crime” as engaging in at least two white collar crimes that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided that at least one of such crimes occurred after the effective date of the Act.

The commission of an aggravated white collar crime under the Act is a first degree felony,¹¹ which is ranked in level 9 of the offense severity ranking chart of the Code (see discussion, *supra*).

In addition to a sentence otherwise authorized by law, a person convicted of an aggravated white collar crime under the Act may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater.¹² This person is also liable for all court costs and must make restitution to each victim of the crime.¹³

The court must hold a hearing to determine the identity of qualifying victims and order the defendant to pay restitution based on his or her ability to pay, in accordance with the Act and s. 775.089, F.S., relating to restitution. The court must also make the payment of restitution a condition of any probation granted to the defendant by the court. Notwithstanding any other law,

¹⁰ Section 775.0844(3), F.S.

¹¹ Section 775.0844(5), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹² Section 775.0844(7), F.S.

¹³ A victim of the offense does not have to be named in the information or indictment. A victim is a person directly and proximately harmed as a result of the commission of the offense for which restitution may be ordered, including any person directly harmed by the defendant’s criminal conduct in the course of the commission of the aggravated white collar crime. Section 775.0844(8), F.S.

the court may order continued probation for a defendant convicted under the Act for up to 10 years or until full restitution is made to the victim, whichever occurs earlier.¹⁴

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹⁵ (Code) as “Florida’s primary sentencing policy.”¹⁶ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹⁷ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.¹⁸ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation,¹⁹ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.²⁰

III. Effect of Proposed Changes:

The bill creates the “Florida Veterans Protection Act,” which amends s. 775.0844, F.S., the “White Collar Crime Victim Protection Act,” to punish a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes 10 or more veterans. The commission of this act is a first degree felony ranked in level 9 of the offense severity ranking chart of the Code. Additionally, a person convicted of an aggravated white collar crime may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater. This person is also liable for all court costs and must make restitution to each victim of the crime.

The term “veteran” is defined pursuant to the definition of that term in s. 1.01, F.S. (See “Present Situation” section of this analysis.)

The bill takes effect October 1, 2020.

¹⁴ Section 775.0844(8)(a), F.S. The court retains jurisdiction to enforce its order to pay fines or restitution. The court may initiate proceedings against a defendant for a violation of probation or for contempt of court if the defendant willfully fails to comply with a lawful order of the court. Section 775.0844(8)(b), F.S.

¹⁵ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹⁶ *Florida’s Criminal Punishment Code: A Comparative Assessment* (September 2018), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf (last visited on Dec. 17, 2019).

¹⁷ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹⁸ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁹ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

²⁰ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

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

The bill does not appear to require 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:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None identified.

B. Private Sector Impact:

To the extent that this bill acts as a deterrent, fewer veterans may experience financial loss as a result of fraud and related offenses.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact, meaning an increase of 10 or fewer prison beds.²¹

VI. Technical Deficiencies:

None.

²¹ The preliminary EDR estimate is on file with the Senate Committee on Criminal Justice. According to the Department of Corrections, in FY 18-19, the court sentenced two offenders to prison for violating s. 775.0844, F.S. Given the low level of offenders, this expansion should not have a significant impact on prison beds. *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.0844 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Wright

14-00381-20

2020294__

1 A bill to be entitled
 2 An act relating to crimes against veterans; providing
 3 a short title; amending s. 775.0844, F.S.; providing
 4 an enhanced sentence for any person who commits
 5 aggravated white collar crimes against a certain
 6 number of veterans by obtaining or attempting to
 7 obtain a specified amount of money; providing criminal
 8 penalties; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. This act may be cited as the "Florida Veterans
 13 Protection Act."
 14 Section 2. Subsection (5) of section 775.0844, Florida
 15 Statutes, is amended, and subsections (4) and (6) of that
 16 section are republished, to read:
 17 775.0844 White Collar Crime Victim Protection Act.—
 18 (4) As used in this section, "aggravated white collar
 19 crime" means engaging in at least two white collar crimes that
 20 have the same or similar intents, results, accomplices, victims,
 21 or methods of commission, or that are otherwise interrelated by
 22 distinguishing characteristics and are not isolated incidents,
 23 provided that at least one of such crimes occurred after the
 24 effective date of this act.
 25 (5) Any person who commits an aggravated white collar crime
 26 as defined in this section and in so doing either:
 27 (a) Victimized 10 or more elderly persons, as defined in s.
 28 825.101;
 29 (b) Victimizes 10 or more veterans, as defined in s. 1.01;

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

14-00381-20

2020294__

30 ~~(c)(b)~~ Victimizes 20 or more persons, as defined in s.
 31 1.01; or
 32 ~~(d)(e)~~ Victimizes the State of Florida, any state agency,
 33 any of the state's political subdivisions, or any agency of the
 34 state's political subdivisions,
 35
 36 and thereby obtains or attempts to obtain \$50,000 or more,
 37 commits a felony of the first degree, punishable as provided in
 38 s. 775.082, s. 775.083, or s. 775.084.
 39 (6) Notwithstanding any other provision of chapter 921 or
 40 any other law, an aggravated white collar crime shall be ranked
 41 within the offense severity ranking chart at offense severity
 42 level 9.
 43 Section 3. This act shall take effect October 1, 2020.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

14 JAN 2020

Meeting Date

SB 294

Bill Number (if applicable)

Topic Crimes Against veterans

Amendment Barcode (if applicable)

Name Danny Burgess

Job Title Executive Director

Address 400 S. Monroe St, Ste 2105 Cap.

Phone 850-487-1533

Street

Tallahassee

FL

32399

City

State

Zip

Email Exdir@FDVA.State.FL.us

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Dept. of Veterans' Affairs

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20

Meeting Date

294

Bill Number (if applicable)

Topic Crimes Against Veterans

Amendment Barcode (if applicable)

Name Meredith Brock Stanfield

Job Title Legislative and Cabinet Affairs

Address PL 11, The Capitol

Phone (850) 413-2890

Tallahassee FL 32399

City

State

Zip

Email Meredith.Stanfield@my.floridacfo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

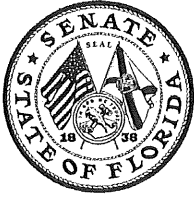
Representing CFO Jimmy Patronis

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

November 13, 2019

The Honorable Keith Perry
316, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 294 – Crimes Against Veterans

Dear Chair Perry:

Senate Bill 294, relating to Crimes Against Veterans has been referred to the Committee on Criminal Justice. I am requesting your consideration on placing SB 294 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: Lauren Jones, Staff Director of the Committee on Criminal Justice
Sue Arnold, Administrative Assistant of the Committee on Criminal Justice

REPLY TO:

- 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

SB 294 – Crimes Against Veterans (Identical HB 167)

This bill amends s. 775.0844, F.S., adding “victimizes 10 or more veterans, as defined in s. 101, F.S.” to the current Level 9, 1st degree felony for aggravated white collar crime, which is defined as “engaging in at least two white collar crimes that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided that at least one of such crimes occurred after the effective date of this act.” Current victims include 10 or more elderly persons, 20 or more persons, the State of Florida, any state agency, any of the state’s political subdivisions, or any agency of the state’s political subdivisions, with the offender having to obtain or attempt to obtain \$50,000 or more.

Per DOC, in FY 18-19, there were 2 offenders admitted to prison for a violation of s. 775.0844, F.S. (mean sentence length=114.5 m). Although sentencing data is not available for FY 18-19, FY 17-18 data indicated that 100% of offenders were sentenced to prison for this offense. However, given the low numbers of offenders, this expansion of the statute should not have a significant effect on prison beds.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: Senate

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 Criminal Justice

BILL: CS/SB 544

INTRODUCER: Criminal Justice Committee and Senator Harrell

SUBJECT: Husband-Wife Communications Privilege

DATE: January 15, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 544 amends the Florida Evidence Code to create an additional exception to the husband-wife communication privilege. The husband-wife privilege generally prevents the disclosure of confidential communications that are made between spouses in certain legal contexts. The privilege may be claimed by either spouse and protects communications made during the marriage, even after the marriage relationship ends.

The Evidence Code contains three exceptions where the husband-wife privilege does not exist. This bill supplies a fourth exception. The bill provides that the marital privilege does not apply, in a civil or criminal proceeding, to a communication concerning the commission or attempt to commit acts that victimize children.

The bill takes effect July 1, 2020.

II. Present Situation:

Marital Privilege

Historical Overview

As English common law¹ developed rules of evidence centuries ago, protections were created to prevent the disclosure of certain confidential communications in legal proceedings. One such protection that developed was the marital privilege, or husband-wife privilege, which protected from disclosure communications made between spouses during a marriage. In *Henderson v. Chaires*,² an 1889 decision, the Florida Supreme Court noted, “No rule of law is better established than that which forbids disclosures by husband or wife as witnesses of matters or conversations occurring between them during coverture. The books abound in cases to support the rule.” The Court further recognized that “the rule holds good even after death or divorce.”³

In a 1977 decision, *Kerlin v. State*,⁴ the Florida Supreme Court reflected on its earlier 19th century opinion, *Mercer v. State*,⁵ which explained the rationale for the marital privilege. The Court stated that the rationale or public policy of the privilege rests in “the preservation of the peace, good order and limitless confidence between the heads of the family so as to promote a well-ordered, civilized society.”⁶

The *Kerlin* Court observed that even at common law, however, the marital privilege was not absolute. It was subject to exceptions and limitations that grew from the need to avoid a harsh injustice to the spouse who could not testify if the rule were strictly enforced. Quoting from a treatise, *Wigmore on Evidence*, the Court restated that “Anyone could see that an absolute privilege in a husband to close the mouth of the wife in testimony against him would be a vested license to injure her in secret with complete immunity.”⁷

The Privilege Described in Statute

Sections 90.504(1) and (2), F.S., state that a spouse, during and after the marriage, has a privilege to refuse to disclose, and prevent another from disclosing, communications made in confidence between them while they were married. The privilege may be claimed by either spouse or by the guardian or conservator of a spouse.

The privilege extends to protect communications made during the marriage even after the marriage relationship ends by death or dissolution. This is intended to preserve harmony in the marriage and prohibit a spouse from being forced to testify against the other spouse. The

¹ Common law is generally understood to be the body of law developed in England from judicial decisions, rather than from statutes or constitutions. These principles were adopted in the colonies and supplemented with local laws and cases to produce what would become the Americanized version of the common law. BLACK’S LAW DICTIONARY (11th ed. 2019).

² *Henderson v. Chaires*, 6 So. 164, 166 (1889).

³ *Id.*

⁴ *Kerlin v. State*, 352 So. 2d 45 (1977).

⁵ *Mercer v. State*, 24 So. 154 (1898).

⁶ *Kerlin*, 352 So. 2d at 48.

⁷ *Kerlin*, 352 So. 2d at 49.

privilege is limited to confidential communications; therefore, the privilege does not permit a spouse to “generally” refuse to testify as a witness against his or her spouse.⁸

Exceptions to the Husband-Wife Privilege

Section 90.504(3), F.S., establishes three situations where the privilege, if honored, would obstruct justice and defeat social policy. Accordingly, in these situations the marital privilege does not exist and the communications are not privileged:

- In a proceeding brought by or on behalf of one spouse *against* the other spouse. This proceeding would likely be a divorce or child custody matter when the spouses are adverse parties. The ability to resolve the conflict could be frustrated if one spouse were able to invoke the privilege and prevent the other spouse from giving testimony as to relevant facts.⁹
- In a criminal proceeding in which one spouse is charged with a crime committed at any time against the person or property of the other spouse, or the person or property of a child of either spouse. Section 39.204, F.S., specifically provides that the husband-wife communication privilege does not apply to any communication involving known or suspected child abuse, abandonment, or neglect.¹⁰
- In a criminal proceeding in which the communication is offered in evidence by a defendant-spouse who is one of the spouses between whom the communication was made. If a criminal defendant calls his or her spouse to testify as a witness, the privilege to avoid testifying may not be asserted by the witness-spouse.¹¹ The assertion of the privilege would possibly suppress evidence that is favorable to the defendant that he or she is entitled to offer. The privilege would not serve to benefit the marriage relationship under these circumstances.¹²

Potential Gap in Current Statutes

While the three exceptions discussed above prohibit the assertion of the marital privilege because it would obstruct justice, prosecuting attorneys have pointed to a situation where the exceptions, as written, do not appear to protect additional minor children who are harmed by the spouse seeking to assert the privilege.

Under s. 90.504(3)(b), F.S., unless the child harmed is *the child of either one of the spouses*, the communication between the spouses involving the abuse is currently protected by the husband-wife communication privilege in a criminal proceeding. If the child harmed is in any other familial relationship to one spouse, for example a grandchild, or is a child who is not related in any way to either spouse, the statute allows the assertion of the privilege and the communication is protected from disclosure. The offending spouse has the ability to invoke the privilege and prevent the other spouse from testifying.

Although s. 39.204, F.S., provides that the marital privilege does not apply in a case of suspected child abuse, abandonment, or neglect, the exception to the privilege in s. 90.504(3)(b), F.S., is

⁸ Charles W. Ehrhardt, *Florida Evidence*, s. 504.1 (2019 Edition).

⁹ Law Revision Council Note—1976, West’s F.S.A., s. 90.504, *Husband-Wife Privilege*.

¹⁰ No social policy is furthered by suppressing the testimony and allowing the marital privilege to impede justice. Ehrhardt, s. 504.5.

¹¹ *Id.*

¹² Law Revision Council Note—1976, West’s F.S.A., s. 90.504, *Husband-Wife Privilege*.

narrower and specifically addresses a criminal proceeding. Some prosecuting attorneys believe that the differences between the statutes allow a defendant to argue that, in a criminal case, s. 39.204, F.S., is limited by s. 90.504(3)(b), F.S., to communications regarding the abuse of a child of either spouse.

III. Effect of Proposed Changes:

The bill creates a fourth exception to the husband-wife communication privilege in s. 90.504, F.S. Under the bill, the privilege does not exist in a civil or criminal proceeding if the communication between the spouses concerns any commission of or the attempt to commit:

- Any act of child abuse;
- Any act of aggravated child abuse;
- Any act of child neglect;
- Any act of manufacture, production, transmission, or possession of child pornography;
- Any act of human trafficking of a child;
- Any act of sexual abuse against a child;
- Any offense involving an unlawful sexual act, contact, or penetration performed in the presence of, with, by, or on any child; or
- Any act which is related to a child and prohibited under:
 - Chapter 39 – Proceedings Related to Children;
 - Chapter 782 – Homicide;
 - Chapter 784 – Assault; Battery; Culpable Negligence;
 - Chapter 787 – Kidnapping; Custody Offenses; Human Trafficking; and Related Offenses;
 - Chapter 794 - Sexual Battery;
 - Chapter 796 – Prostitution;
 - Chapter 800 – Lewdness; Indecent Exposure;
 - Chapter 826 – Bigamy; Incest;
 - Chapter 827 – Abuse of Children; and
 - Chapter 847 – Obscenity.

By stating that the husband-wife privilege does not exist in civil or criminal proceedings, the bill clarifies that there is no evidentiary privilege for someone who victimizes a child, regardless of the type of proceeding.

Hypotheticals where this new exception could apply in civil proceedings are set forth below.

- If a camp counselor abuses a child and the counselor admits committing the abuse to his or her spouse. The child's parents sue the counselor for damages. The new exception to the privilege would allow the counselor's spouse to testify about the abuse allegations.
- If the spouse of the counselor brings an action to limit or terminate the counselor's right to have unsupervised contact with their own children because of the known abuse to the victim. The spouse would be permitted to testify about the counselor's abuse communications.
- If the state petitions a court under the Jimmy Ryce Act, which is an involuntary civil commitment proceeding, the communication could be used to indefinitely commit someone who is to be released from prison and is a high risk to sexually reoffend.¹³

¹³ Chapter 394, Part V, F.S.

In the criminal context, a defendant who is alleged to have committed or attempted to commit any criminal act listed above where a child is the victim of the act or attempted act should not be able to claim the husband-wife communications privilege to prevent his or her spouse from testifying in a criminal proceeding.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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:

None.

VIII. Statutes Affected:

This bill substantially amends section 90.504 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 January 14, 2020:

The committee substitute:

- Removes the terms “sexual abuse,” “physical abuse,” or “neglect” of any minor child from the bill;
- More precisely defines the various acts by re-stating some of them, by listing the chapters within which criminal law violations against children appear in the Florida Statutes, as well as the civil Proceedings Relating to Children, chapter 39, F.S.;
- The criminal law chapters cited by the bill are:
 - Chapter 782, F.S. – Homicide;
 - Chapter 784, F.S. – Assault; Battery; Culpable Negligence;
 - Chapter 787, F.S. – Kidnapping; Custody Offenses; Human Trafficking; and Related Offenses;
 - Chapter 794, F.S. - Sexual Battery;
 - Chapter 796, F.S. – Prostitution;
 - Chapter 800, F.S. – Lewdness; Indecent Exposure;
 - Chapter 826, F.S. – Bigamy; Incest;
 - Chapter 827, F.S. – Abuse of Children; and
 - Chapter 847, F.S. – Obscenity.

- B. **Amendments:**

None.



351250

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
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The Committee on Criminal Justice (Harrell) recommended the following:

Senate Amendment

Delete lines 16 - 19
and insert:

(d) In a civil or criminal proceeding if the communication between spouses concerns any commission of or the attempt to commit:

1. Any act of child abuse, aggravated child abuse, or child neglect; any act of manufacture, production, transmission or possession of child pornography; any act of human trafficking of



351250

11 a child; any act of sexual abuse against a child; any offense
12 involving an unlawful sexual act, contact, or penetration
13 performed in the presence of, with, by, or on any child.

14 2. Any act which is related to a child and prohibited under
15 chapter 39, chapter 782, chapter 784, chapter 787, chapter 794,
16 chapter 796, chapter 800, chapter 826, chapter 827, or chapter
17 847.

By Senator Harrell

25-00621A-20

2020544__

1 A bill to be entitled
2 An act relating to husband-wife communications
3 privilege; amending s. 90.504, F.S.; providing that
4 the privilege for husband-wife communications does not
5 apply in certain civil or criminal proceedings
6 involving child victims, to the extent that the
7 communications concern certain conduct; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (d) is added to subsection (3) of
13 section 90.504, Florida Statutes, to read:
14 90.504 Husband-wife privilege.—
15 (3) There is no privilege under this section:
16 (d) In a civil or criminal proceeding when the
17 communication between spouses concerns committing or attempting
18 to commit any act of sexual abuse of any minor child, physical
19 abuse of any minor child, or neglect of any minor child.
20 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 14, '20
Meeting Date

SB 544
Bill Number (if applicable)

Topic Husband-Wife Communications Privilege Amendment Barcode (if applicable)

Name Alan Johnson

Job Title Chief Assistant State Attorney - 15th Judicial Circuit

Address 401 N. Dixie Highway Phone 561-355-7265
Street

West Palm Beach, FL 33401 Email AJohnson@SA15.org
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of the State Attorney, 15th Circuit

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

544

Meeting Date _____ Bill Number (if applicable) 544

Topic Husband & Wife Privilege Amendment Barcode (if applicable) _____

Name Dave Aronberg

Job Title State Attorney, 15th Judicial Circuit

Address 401 N Dixie Hwy Phone 561-355-7246
Street City State Zip

WPB FL 33401 Email dave@sa15.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL
25th District

November 20, 2019

Senator Keith Perry
316 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Perry,

I respectfully request that **SB 544 – Husband-Wife Communications Privilege** be placed on the next available agenda for the Committee Meeting on Criminal Justice. SB 544 passed its last committee stop unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Lauren Jones, Staff Director
Sue Arnold, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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 Criminal Justice

BILL: CS/SB 700

INTRODUCER: Criminal Justice Committee and Senator Perry and others

SUBJECT: Juvenile Diversion Program Expunction

DATE: January 15, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 700 amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense, including felony offenses. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense, including a felony or subsequent offense, to lawfully deny or fail to acknowledge his or her participation in the program. This expands the current law, which only permits a juvenile who completes diversion for a first-time misdemeanor offense to lawfully deny or fail to acknowledge his or her participation in the program.

This bill may have a negative fiscal impact on the FDLE. See Section V. Fiscal Impact Statement.

This bill is effective on the same date that SB 1292 or similar legislation takes effect.

II. Present Situation:

Juvenile Criminal History Records

In contrast to adult criminal history records,¹ which are generally accessible to the public, Florida law treats juvenile offender records that are in the jurisdiction of juvenile courts differently, making such records confidential and exempt from public disclosure.²

Such records that are confidential and exempt information may be disclosed only to:

- Authorized personnel of the court;
- The Department of Juvenile Justice (DJJ) and its designees;
- The Department of Corrections;
- The Florida Commission on Offender Review;
- Law enforcement agents;
- School superintendents and their designees;
- Any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile; and
- Others entitled under ch. 985, F.S., to receive that information, or upon order of the court.³

However, the following exceptions apply:

- The name, photograph, address, and crime or arrest report of a juvenile is not considered confidential and exempt if the juvenile has been:
 - Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
 - Charged with a violation of law which, if committed by an adult, would be a felony;
 - Found to have committed an offense which, if committed by an adult, would be a felony;or
 - Transferred to adult court pursuant to part X of ch. 985, F.S.;
- A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense;⁴
- A law enforcement agency must notify the superintendent of schools that a juvenile is alleged to have committed a delinquent act when a juvenile of any age is taken into custody for an offense that would have been a felony if committed by an adult, or a crime of violence;⁵

¹ “Criminal history record” means any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(6), F.S.

² Section 985.04(1)(a), F.S. Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.

³ Section 985.04(1)(b), F.S.

⁴ Information gained by the victim pursuant to ch. 985, F.S., including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies. Section 985.04(3), F.S.

⁵ When a juvenile of any age is formally charged by a state attorney with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile’s school that the juvenile has been charged with such felony or delinquent act. The information obtained by the superintendent of schools must be released within 48 hours after receipt to appropriate school personnel, including the principal of the school of the juvenile and the director of transportation. The principal must immediately notify the juvenile’s classroom teachers, the juvenile’s assigned bus driver, and any other school personnel whose duties include direct supervision of the juvenile. Section 985.04(4)(b), F.S.

- Records maintained by the DJJ, including copies of records maintained by the court, which pertain to a juvenile found to have committed a delinquent act which, if committed by an adult, would be a crime specified in s. 435.04, F.S., may not be destroyed for 25 years after the juvenile's final referral to the DJJ, except in cases of the death of the juvenile; and
- Records in the custody of the DJJ may be inspected only upon order of the Secretary or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper.⁶

In these instances, the criminal history information⁷ of a juvenile will be available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S., for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.⁸

Records pertaining to juveniles committed to or supervised by the DJJ are retained until a juvenile reaches the age of 24 years or 26 years in the case of a serious or habitual delinquent child, and the destruction of such records are governed by ch. 943, F.S.⁹

Juvenile Diversion Program Expunction

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed¹⁰ or expunged.¹¹ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody of the record.¹² The following are authorized expungement processes for the criminal history record of a juvenile:

- Juvenile diversion;¹³
- Automatic juvenile;¹⁴ and

⁶ Section 985.04, F.S.

⁷ "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. Section 943.045(5), F.S.

⁸ Section 943.053(3)(c)1.a.-d., F.S.

⁹ Section 985.04(7)(b), F.S.

¹⁰ "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

¹¹ Section 943.053(3)(b), F.S.

¹² Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

¹³ Section 943.0582, F.S.

¹⁴ Section 943.0515, F.S.

- Early juvenile.¹⁵

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.¹⁶ The term diversion has been broadly used over the years, but typically refers to the placement of an individual on a track that is less restrictive and affords more opportunities for rehabilitation and restoration. Whether it is a prearrest or postarrest diversion program, the goal of the program is to maximize the opportunity for success and minimize the likelihood of recidivism.¹⁷

There are certain enumerated diversion programs eligible for diversion expunction under s. 943.0582, F.S. The following programs are eligible:

- Civil citation or similar pre-arrest diversion (s. 985.12, F.S.).
- Pre-arrest or post-arrest diversion programs (s. 985.125, F.S.).
- Neighborhood restorative justice programs (s. 985.155, F.S.).
- Community arbitration programs (s. 985.16, F.S.).
- Another program to which a referral is made by the state attorney (s. 985.15, F.S.).

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer that confronted the juvenile at the time of the incident or the state attorney that has been referred the case. While participation in a diversion program may be restricted to misdemeanor offenses, there are some programs that enable a juvenile who has committed a felony to participate. In FY 2018-19, there were 4,965 juveniles who were referred to post arrest diversion programs for felony offenses.¹⁸

After completing an eligible diversion program, a juvenile seeking to have his or her nonjudicial arrest record expunged must :

- Submit an application for diversion expunction to the FDLE.
- Submit, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that:
 - He or she has completed the diversion program;
 - The arrest was for a misdemeanor; and
 - He or she has not otherwise been charged by the state attorney with or have been found to have committed, any criminal offense or comparable ordinance violation.
- Have not, before the application for expunction, been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.¹⁹

¹⁵ Section 943.0515(1)(b)2., F.S.

¹⁶ Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last accessed January 9, 2020).

¹⁷ Center for Health & Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, pg. 6, (December 2013), available at http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last accessed January 9, 2020).

¹⁸ Florida Department of Juvenile Justice, *Delinquency Profile 2018, Statewide Diversion – Felony Arrests*, (September 13, 2019), available at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited January 9, 2020).

¹⁹ Section 943.0582(3), F.S.

If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.²⁰

A criminal history record that is expunged under this section is only available to criminal justice agencies for the purpose of determining eligibility for diversion programs, a criminal investigation, or making a prosecutorial decision. Records that are eligible for expunction under this section must be sealed.²¹ A juvenile who successfully completes a diversion program for a first time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and the expunction of the nonjudicial arrest record, unless the inquiry is made by a criminal justice agency²² for one of the purposes stated above.²³

A juvenile who receives an expunction under this section is not prevented from petitioning for the expunction or sealing of a later criminal history record for human trafficking victim expunction,²⁴ court ordered expunction,²⁵ or court ordered sealing,²⁶ if the juvenile is otherwise eligible for relief under those sections.²⁷

III. Effect of Proposed Changes:

This bill amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense, including *felony offenses*. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense, including a *felony or subsequent offense*, to lawfully deny or fail to acknowledge his or her participation in the program. This expands the current law, which only permits a juvenile who completes diversion for a *first-time misdemeanor offense* to lawfully deny or fail to acknowledge his or her participation in the program.

This bill is effective on the same date that SB 1292 or similar legislation takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁰ Section 943.0582(3), F.S.

²¹ Section 943.0582(2)(b), F.S.

²² “Criminal justice agency” means: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. Section 942.045(11), F.S.

²³ Section 985.126(5), F.S.

²⁴ Section 943.0583, F.S.

²⁵ Section 943.0585, F.S.

²⁶ Section 943.059, F.S.

²⁷ Section 943.0582, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE may see an increase in applications for diversion expunction from juveniles who have completed diversion for a felony offense. The FDLE reports that there are currently 21,773 minors with 53,294 juvenile felony arrest charges with or without disposition that may qualify for juvenile diversion expunction. The FDLE estimates it needs \$24,050 to make programmatic changes to its technology systems.²⁸ Therefore, this bill may have a negative indeterminate fiscal impact on the FDLE.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.0582 and 985.126.

²⁸ Florida Department of Law Enforcement, *2020 Agency Analysis of SB 700* (November 22, 2019), at 4. On file with Senate Committee on Criminal Justice.

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 January 14, 2020:

The committee substitute ensures that this bill will take effect at the same time that linked bill SB 1292 takes effect.

- B. **Amendments:**

None.



787556

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/14/2020	.	
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The Committee on Criminal Justice (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 21 - 41

and insert:

program, after the minor reaches 18 years of age, if that minor:

(b) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's diversion program, ~~that his or her participation in the program was based on an arrest~~



787556

11 ~~for a misdemeanor~~, and that he or she has not otherwise been
12 charged by the state attorney with, or found to have committed,
13 any criminal offense or comparable ordinance violation.

14 Section 2. Subsection (5) of section 985.126, Florida
15 Statutes is amended to read:

16 985.126 Diversion programs; data collection; denial of
17 participation or expunged record.-

18 (5) A minor who successfully completes a diversion program
19 ~~for a first-time misdemeanor offense~~ may lawfully deny or fail
20 to acknowledge his or her participation in the program and an
21 expunction of a nonjudicial arrest record under s. 943.0582,
22 unless the inquiry is made by a criminal justice agency, as
23 defined in s. 943.045, for a purpose described in s.
24 943.0582(2)(b)1.

25 Section 3. This act shall take effect on the same date that
26 SB 1292 or similar legislation takes effect, if such legislation
27 is adopted in the same legislative session or an extension
28 thereof and becomes law.

29
30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

32 Delete lines 5 - 7

33 and insert:

34 to programs for misdemeanor offenses; requiring that
35 the minor reach the age of 18 before he or she is
36 eligible for juvenile diversion program expunction;
37 amending s. 985.126, F.S.; conforming a provision to
38 changes made by the act; providing a contingent
39 effective date.



881846

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete line 41

and insert:

Section 3. This act shall take effect on the same date that SB 1292 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

===== T I T L E A M E N D M E N T =====



11 And the title is amended as follows:
12 Delete line 7
13 and insert:
14 by the act; providing a contingent effective date.

By Senator Perry

8-00710-20

2020700__

1 A bill to be entitled
 2 An act relating to juvenile diversion program
 3 expunction; amending s. 943.0582, F.S.; deleting a
 4 requirement that limits diversion program expunction
 5 to programs for misdemeanor offenses; amending s.
 6 985.126, F.S.; conforming a provision to changes made
 7 by the act; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Subsection (1) and paragraph (b) of subsection
 12 (3) of section 943.0582, Florida Statutes, are amended to read:
 13 943.0582 Diversion program expunction.—
 14 (1) Notwithstanding any law dealing generally with the
 15 preservation and destruction of public records, the department
 16 shall adopt rules to provide for the expunction of a nonjudicial
 17 record of the arrest of a minor who has successfully completed a
 18 diversion program ~~for a misdemeanor offense~~.
 19 (3) The department shall expunge the nonjudicial arrest
 20 record of a minor who has successfully completed a diversion
 21 program if that minor:
 22 (b) Submits to the department, with the application, an
 23 official written statement from the state attorney for the
 24 county in which the arrest occurred certifying that he or she
 25 has successfully completed that county's diversion program, ~~that~~
 26 ~~his or her participation in the program was based on an arrest~~
 27 ~~for a misdemeanor~~, and that he or she has not otherwise been
 28 charged by the state attorney with, or found to have committed,
 29 any criminal offense or comparable ordinance violation.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

8-00710-20

2020700__

30 Section 2. Subsection (5) of section 985.126, Florida
 31 Statutes, is amended to read:
 32 985.126 Diversion programs; data collection; denial of
 33 participation or expunged record.—
 34 (5) A minor who successfully completes a diversion program
 35 ~~for a first-time misdemeanor offense~~ may lawfully deny or fail
 36 to acknowledge his or her participation in the program and an
 37 expunction of a nonjudicial arrest record under s. 943.0582,
 38 unless the inquiry is made by a criminal justice agency, as
 39 defined in s. 943.045, for a purpose described in s.
 40 943.0582(2)(b)1.
 41 Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20
Meeting Date

400
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Candice Brower

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of Crim. Conflict - Civil Regional Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20
Meeting Date

SB 700
Bill Number (if applicable)

Topic Juvenile Diversion Program Expansion

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Executive Director

Address 1300 N Adams St,
Street

Phone 321-223-4232

Tallahassee FL 32303
City State Zip

Email CMINOR@FJJA.ORG

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Juvenile Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20

Meeting Date

SB 700

Bill Number (if applicable)

Topic Juvenile Justice - Expunction

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler Rd

Phone 786-363-4436

Street

Miami

FL

Email kgross@aclufl.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

700

Bill Number (if applicable)

Topic Expunction of Juvenile Records

Amendment Barcode (if applicable)

Name Rex Dimmig

Job Title Public Defender, 10th Judicial Circuit

Address Polk County Courthouse, 255 North Broadway, 3d Floor

Phone 863-534-4200

Street

Bartow

Florida

33830

Email rdimmig@pd10.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-14-2020

Meeting Date

SB 700

Bill Number (if applicable)

Topic Juvenile Diversion

Amendment Barcode (if applicable)

Name DAWN Steward

Job Title _____

Address 2130 Blossom Lane

Phone 407-645-0273

Street

Email st2130@aol.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

SB 700

Bill Number (if applicable)

Topic Juvenile Justice - Expunction

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20

Meeting Date

700

Bill Number (if applicable)

Topic Juvenile Diversion program Expunction

Amendment Barcode (if applicable)

Name Michael Dobson

Job Title President

Address 4005 Brandon Hill Dr

Phone (850) 241-5896

Tall

FL

32309

Email Michael@live-the-dream-foundation.org

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing The Dream Foundation, Inc

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/14/20

Meeting Date

700

Bill Number (if applicable)

Topic CRIMINAL JUSTICE

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



2020 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

BILL NUMBER:	SB 700
BILL TITLE:	Juvenile Diversion Program Expunction
BILL SPONSOR:	Senator Perry
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

IDENTICAL BILLS

BILL NUMBER:	615
SPONSOR:	Watson

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	November 22, 2019
LEAD AGENCY ANALYST:	Charles Schaeffer
ADDITIONAL ANALYST(S):	Tim Giesecke, Gina Zapata, Andrew Branch, Becky Bezemek
LEGAL ANALYST:	Jason Jones, Joe White
FISCAL ANALYST:	Cynthia Barr

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Amends s. 943.0582, F.S., deleting the requirement which limits diversion program expunction to programs for misdemeanor offenses. It also amends s. 985.126, F.S., removing the provision that the diversion program is only for a misdemeanor offense.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Under current law, a minor who has gone through a diversion program for a misdemeanor offense may apply to have the record expunged from the department's criminal history file. FDLE's Seal and Expunge section received 255 juvenile diversion expunction applications in 2018.
2. **EFFECT OF THE BILL:** Amends s. 943.0582, F.S., by removing the requirement limiting the diversion program expunction to programs for misdemeanor offenses. The proposed language will further allow minors who complete a juvenile diversion program for felonies or comparable ordinance violations to apply for the juvenile diversion expunction. Currently, the Computerized Criminal History (CCH) files contain 53,294 arrest charges for 21,773 individuals with records containing a juvenile felony arrest with or without a disposition. There is no fee associated with the juvenile diversion application process.
3. **DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES?** Y N

If yes, explain:	
What is the expected impact to the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	
Date Due:	
Bill Section Number:	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y N

Board:	
Board Purpose:	

Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	Since there is no charge for juvenile diversion applications, the additional workload would cause a loss in revenue.
Expenditures:	There are currently 21,773 minors with 53,294 juvenile felony arrest charges with or without a disposition which may qualify for juvenile diversion expunction. Assuming 10% of those eligible persons apply for a juvenile diversion expunction, there would be an additional 2,177 applications received by FDLE for processing. While the impact of this bill does not necessitate additional FTE or other resources, this bill in combination with additional criminal history record check bills could rise to the level requiring additional staffing and other resources.
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	
Expenditures:	
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	<p>The department estimates \$24,050 to make programmatic changes to CCH includes analysis, development, integration testing and deployment. This does not include any non-functional testing and support time. The implication of the legislation will have an effect on CCH in the following capacities:</p> <ol style="list-style-type: none"> 1) The Juvenile Diversion Expunction application located on the Intake Web will require a verbiage change and once edited, the application will need to be integrated. 2) The Reason for Denial "Charge requested is a Felony or Violent Misdemeanor" under the Precertification Outcome section will need to be removed.
--	---

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	
--	--

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	<p>Because the bill does not revise s. 943.0582(4), FS, it appears a person that received a diversion expunction for a felony or a misdemeanor would presumably not be eligible to also apply for early expunction of additional juvenile records under s. 943.0515(1)(b)2, FS. However, it would be helpful if the Legislature's intent on this point was clearly specified.</p>
--	---

ADDITIONAL COMMENTS

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 Criminal Justice

BILL: CS/SB 846

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Costs of Prosecution and Investigation

DATE: January 15, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 846 amends s. 938.27, F.S., to prohibit the state attorney and defense counsel from presenting a negotiated plea agreement for the court's consideration which contains amounts greater than the current statutory minimum of \$50 (assessed in misdemeanor or criminal traffic cases) or \$100 (felony cases) costs for the state attorney.

The bill also reenacts s. 985.032(2), F.S., related to costs of prosecution in juvenile delinquency cases to incorporate changes made by this bill.

There is no reported fiscal impact for the bill.

The bill takes effect July 1, 2020.

II. Present Situation:

Plea Agreements

The Florida Rules of Criminal Procedure recognize that most criminal cases are disposed of by pleas arrived at by negotiations between the prosecutor and defense counsel.¹ In fact, Rule 3.171 states that the prosecuting attorney and the defense attorney, or the defendant when representing himself or herself, are encouraged to discuss and to agree on pleas that may be entered by a

¹ Rule 3.171, Fla.R.Crim.P., Committee Notes, 1972 Amendment.

defendant.² A plea agreement is essentially a contract between the State and the defendant and may include details such as that charges are being dropped by the State in exchange for the plea, that a certain sentence will be recommended to the court, and that fines, fees, and costs will be made part of the recommended sentence.³ The court has the ultimate responsibility for determining the proper sentence in a case and can accept or reject the plea agreement.⁴

Costs of Prosecution/Investigation and Costs for the State Attorney

A person who is convicted of a criminal offense, including in violation of probation cases and violation of community control cases, is statutorily liable for the payment of costs for the state attorney and costs of prosecution.⁵ Costs of prosecution includes investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies.⁶

However, even if the defendant agrees to pay these statutory costs as part of a plea agreement it does not alleviate the court's obligation to impose the costs as the statutory procedures require.⁷ For example, s. 938.27(1), F.S., requires a law enforcement agency or other listed agency to *request* the payment of investigative costs and provide supporting documentation.⁸

Section 938.27(8), F.S., provides that costs for the state attorney must be set in all cases at no less than \$50 per case for a misdemeanor or criminal traffic offense and no less than \$100 per case for a felony offense. The costs are also assessable in a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred.⁹

Costs recovered on behalf of the state attorney must be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal

² Rule 3.171(a), Fla.R.Crim.P.

³ *Churchill v. State*, 219 So.3d 14, 18 (Fla. 2017) (citing *Garcia v. State*, 722 So.2d 905, 907 (Fla. 3d DCA 1998)).

⁴ Rule 3.171(a), Fla.R.Crim.P.

⁵ Section 938.27(1), (8), F.S. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. Additionally, s. 985.032, F.S., provides that a juvenile who has been adjudicated delinquent or has had adjudication of delinquency withheld must have costs of prosecution assessed as provided in s. 938.27, F.S.

⁶ Section 938.27(1), F.S. Costs of prosecution, as defined in s. 938.27, F.S., does not include "state attorney's fees." *Weeks v. State*, 659 So.2d 695 (Fla. 4th DCA 1995), rev. den., 666 So. 2d 145 (Fla. 1995); *Mickler v. State*, 682 So.2d 607 (Fla. 2d DCA, 1996). Note that when the Office of the State Attorney incurs purely investigative costs in a particular case, those costs may be ordered to be paid by the defendant, as costs of prosecution, if requested.

⁷ *Tolbert v. State*, 698 So.2d 1288 (1997).

⁸ Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires. Section 938.27(4), F.S.

⁹ Section 938.27(8), F.S.

cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 938.27, F.S., by creating a new subsection (2) and renumbering other subsections in that section of law. The new subsection (2) retains part of the language from the current subsection (8) which:

- Requires costs for the state attorney be set at no less than \$50 per case for a misdemeanor or criminal traffic offense;
- Requires costs for the state attorney be set at no less than \$100 per case for a felony offense;
- Requires that the court set such minimum costs in proceedings in which the underlying offense is a violation of probation or community control; and
- Provides that the court may set such costs at a higher amount if sufficient proof shows that higher costs were incurred by the state attorney.

The bill amends the new subsection (2) of s. 938.27, F.S., to prohibit the state attorney and the defense counsel from presenting a negotiated plea agreement to the court containing costs for the state attorney in amounts greater than the current minimum. These costs are \$50 in misdemeanor or criminal traffic cases and \$100 in felony cases. This provision would likely discourage, or eliminate altogether, using costs in excess of the minimum for the state attorney as a bargaining chip by either party during plea negotiations.

The bill creates a new subsection (9) of s. 938.27, F.S., which contains the remainder of the existing language in current subsection (8). This language provides that the costs recovered on behalf of the state attorney must be deposited into the State Attorneys Revenue Trust Fund and designates how the funds may be spent.

Current subsections (2) through (8) of s. 938.27, F.S., are redesignated by the bill as subsections (3) through (9).

Section 985.032(2), F.S., which provides for the assessment of costs of prosecution in juvenile delinquency cases is reenacted to incorporate the amendment to s. 938.27, F.S.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁰ *Id.*

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None reported.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 938.27 of the Florida Statutes.

The bill reenacts section 985.032 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 January 14, 2020:

The committee substitute removes the phrase “that amount” from the bill and replaces it with a more specific reference to the statutory minimum costs for the state attorney as set forth in s. 938.27(8), F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



532144

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Simmons) recommended the following:

Senate Amendment

Delete line 27
and insert:
sufficient proof of higher costs incurred; however, any amount exceeding the statutory minimum misdemeanor, criminal traffic, or felony costs

By Senator Simmons

9-00884-20

2020846__

1 A bill to be entitled
 2 An act relating to costs of prosecution and
 3 investigation; amending s. 938.27, F.S.; prohibiting
 4 the inclusion in negotiated plea agreements of costs
 5 for the state attorney which are greater than the
 6 minimum required; reenacting s. 985.032(2), F.S.,
 7 relating to assessing costs of prosecution to a
 8 juvenile, to incorporate the amendment made to s.
 9 938.27, F.S., in a reference thereto; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Present subsections (2) through (8) of section
 15 938.27, Florida Statutes, are redesignated as subsections (3)
 16 through (9), respectively, a new subsection (2) is added to that
 17 section, and present subsection (8) of that section is amended,
 18 to read:

19 938.27 Judgment for costs of prosecution and
 20 investigation.-

21 (2) Costs for the state attorney must be set in all cases
 22 at no less than \$50 per case when a misdemeanor or criminal
 23 traffic offense is charged and no less than \$100 per case when a
 24 felony offense is charged, including a proceeding in which the
 25 underlying offense is a violation of probation or community
 26 control. The court may set a higher amount upon a showing of
 27 sufficient proof of higher costs incurred; however, that amount
 28 may not be included as part of a negotiated plea agreement
 29 submitted to the court for consideration.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

9-00884-20

2020846__

30 ~~(9)(8) Costs for the state attorney must be set in all~~
 31 ~~cases at no less than \$50 per case when a misdemeanor or~~
 32 ~~criminal traffic offense is charged and no less than \$100 per~~
 33 ~~case when a felony offense is charged, including a proceeding in~~
 34 ~~which the underlying offense is a violation of probation or~~
 35 ~~community control. The court may set a higher amount upon a~~
 36 ~~showing of sufficient proof of higher costs incurred. Costs~~
 37 ~~recovered on behalf of the state attorney under this section~~
 38 ~~must be deposited into the State Attorneys Revenue Trust Fund to~~
 39 ~~be used during the fiscal year in which the funds are collected,~~
 40 ~~or in any subsequent fiscal year, for actual expenses incurred~~
 41 ~~in investigating and prosecuting criminal cases, which may~~
 42 ~~include the salaries of permanent employees, or for any other~~
 43 ~~purpose authorized by the Legislature.~~

44 Section 2. For the purpose of incorporating the amendment
 45 made by this act to section 938.27, Florida Statutes, in a
 46 reference thereto, subsection (2) of section 985.032, Florida
 47 Statutes, is reenacted to read:

48 985.032 Legal representation for delinquency cases.-

49 (2) A juvenile who has been adjudicated delinquent or has
 50 adjudication of delinquency withheld shall be assessed costs of
 51 prosecution as provided in s. 938.27.

52 Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Cost of Prosecution

Name

Dave Aronberg Aronberg

Job Title

State Attorney, 15th Judicial Cir.

Address

401 N Dixie Hwy

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Phone

561-355-7246

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WPB

State

FL 33401

Zip

Email

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-14-2020

Meeting Date

SB 846

Bill Number (if applicable)

Topic Costs of Prosecution and Investigation

Amendment Barcode (if applicable)

Name Rex Dimmig

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Phone 863-534-4250

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City

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State

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Zip

Email rdimmig@pd10.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Last

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/14/20

Meeting Date

SB 0846

Bill Number (if applicable)

Topic Cost of Prosecution

Amendment Barcode (if applicable)

Name Brian Haas

Job Title State Attorney 10th Judicial Circuit

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33830

Email Bhaas@sco10.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing State Attorney 10th Circuit

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: November 22, 2019

I respectfully request that **Senate Bill 846**, relating to Costs of Prosecution and Investigation, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

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 Criminal Justice

BILL: CS/SB 852

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Incarcerated Pregnant Women

DATE: January 16, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 852 amends s. 944.241, F.S., which currently addresses the use of restraints on pregnant prisoners in Florida’s correctional institutions, to expand the prohibition on the use of restraints on pregnant prisoners. Additionally, the bill prescribes when a corrections officer may conduct an invasive body cavity search and when a pregnant prisoner may be placed in restrictive housing.

The bill expands the prohibition of using restraints on a pregnant prisoner under current law to cover when a pregnant prisoner is being transported. This applies to a pregnant prisoner at any point in her known pregnancy. The bill prescribes certain circumstances in which restraints may not be used, which are substantively similar to the exceptions provided for in current law.

The bill provides that an invasive body cavity search of a pregnant prisoner may only be conducted by a medical professional, unless a correctional officer has a reasonable belief that the prisoner is concealing contraband and such correctional officer submits a written report to the corrections official within 72 hours after the search including specified information supporting the need for the search.

The bill prohibits a pregnant prisoner from being involuntarily placed in restrictive housing unless specified correctional staff determine that an extraordinary circumstance exists such that restrictive housing is necessary and there are no less restrictive means available.

The bill requires the corrections official to write a report documenting the need for the use of restrictive housing prior to placing the prisoner in restrictive housing. The corrections official is required to review the report at least every 24 hours to confirm that the extraordinary circumstance still exists. A copy of the report and each review must be provided to the prisoner.

Additionally, the bill requires a pregnant prisoner who is placed in restrictive housing to be examined at least every eight hours, housed in the least restrictive setting consistent with the health and safety of the individual, and given an intensive treatment plan for prenatal care and medical treatment at the facility.

In the case that a pregnant prisoner needs infirmary care, the bill requires a primary care nurse practitioner or obstetrician to provide an order for the prisoner to be admitted to the infirmary and requires that a prisoner who is passed her due date be admitted to the infirmary until labor begins or until the obstetrician makes other housing arrangements.

To the effect that the bill requires the DOC, DJJ, or detention facilities to hire additional staff to comply, the bill may result in a positive fiscal impact (i.e. an increase) to such entities as a result of an increased workload. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Pregnancy in Prison

Reports predict that an estimated four to ten percent of women are pregnant upon being committed to prison or jail.¹ However, documentation of pregnancies and pregnancy care while incarcerated is sparse. The most recent data from the Bureau of Justice Statistics (BJS) was collected more than 15 years ago. In 2002, the BJS found that five percent of women in local jails were pregnant when admitted. In 2004, the BJS reported that four percent of women in state prisons and three percent of women in federal prisons were pregnant upon admission. The government has not released any further national data since.²

The American College of Obstetricians and Gynecologists (ACOG) report that pregnancies among incarcerated women are often higher risk due to a number of factors, including that such

¹ Ferszt, G., Palmer, M., and McGrane, C., Nursing for Women's Health, *Where Does Your State Stand on Shackling of Pregnant Incarcerated Women?*, February 2018, available at [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf) (hereinafter cited as "Nursing for Women's Health Report"); Daniel, R., Prison Policy Initiative, *Prisons neglect pregnant women in their healthcare policies*, December 5, 2019, available at <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/> (hereinafter cited as "Prison Policy Initiative report") (all sites last visited January 3, 2020).

² Prison Policy Initiative Report. See also Sufrin, C., Beal, L., Clarke, J., Jones, R., and Mosher, W., The American Journal of Public Health, *Pregnancy Outcomes in US Prison, 2016-2017*, January 15, 2019, available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305006> (hereinafter cited as "Pregnancy Outcomes Report") (last visited on January 3, 2020).

pregnancies are often unplanned and are compromised by a lack of prenatal care, poor nutrition, domestic violence, mental illness, and drug and alcohol abuse.³

Further, the ACOG reports a number of risks that are directly related to a pregnant inmate being restrained, including:

- Added discomfort during the common pregnancy symptoms of nausea and vomiting.
- The inability of a pregnant inmate to break a fall and protect herself and the fetus in the case of a forward fall.
- The inability for healthcare providers to perform a number of tests to evaluate for conditions such as appendicitis, preterm labor, or kidney infection if a pregnant inmate has abdominal pain during pregnancy.
- A delay in diagnosing issues after vaginal bleeding during pregnancy.
- The inability to safely treat a pregnant inmate who is suffering from seizures related to hypertensive disease and preeclampsia,⁴ which are common in pregnancy.
- Interference with normal labor and delivery, such as prohibiting the pregnant inmate from:
 - Ambulating during labor, which increases the likelihood for adequate pain management, successful cervical dilation, and a successful vaginal delivery.
 - Moving or being moved in preparation for emergencies of labor and delivery, including shoulder dystocia, hemorrhage, or abnormalities of the fetal heart rate requiring intervention, including urgent cesarean delivery.⁵

The Florida Department of Corrections (DOC) has five female correctional institutions statewide.⁶ The DOC assigns female prisoners to institutions based on current classification procedures while facilitating the individual risk and needs of prisoners to the extent possible considering security, medical and mental health needs, programmatic needs, geographic realities, and prohibitive monetary factors. The Lowell Correctional Institution houses all pregnant prisoners for the duration of the pregnancy and prisoners within six weeks post-delivery. Lowell Correctional Institution is the only institution in the state designed and staffed to care for expectant and early postpartum prisoners.

Upon confirmation of pregnancy, the prisoner's medical grade is changed and the pregnant prisoner is referred to a licensed physician for obstetrical care to provide prenatal care and follow

³ The American College of Obstetricians and Gynecologists, Committee Opinion, *Health Care for Pregnancy and Postpartum Incarcerated Women and Adolescent Females*, November 2011, available at <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females?IsMobileSet=false> (last visited January 3, 2020); See also Nursing for Women's Health Report.

⁴ Preeclampsia results in a pregnant woman exhibiting high blood pressure, protein in the urine, and swelling in the body. It also results in signs of damage to another organ system, most often the liver and kidneys. Preeclampsia usually begins after 20 weeks of pregnancy in women whose blood pressure had been normal. See Mayo Clinic, *Preeclampsia, Overview*, available at <https://www.mayoclinic.org/diseases-conditions/preeclampsia/symptoms-causes/syc-20355745>; WebMD, *What is Preeclampsia?*, available at <https://www.webmd.com/baby/preeclampsia-eclampsia#1> (all sites last visited January 6, 2020).

⁵ *Supra*, n. 3.

⁶ These facilities are Gadsden Correctional Facility in Quincy, Lowell Correctional Institution in Ocala, Florida Women's Reception Center in Ocala, Hernando Correctional Institution in Brooksville, and Homestead Correctional Institution in Florida City. The DOC, *Agency Analysis for SB 852*, January 10, 2020, p. 2 (on file with Senate Criminal Justice Committee)(hereinafter cited as "The DOC SB 852 Analysis").

them throughout the pregnancy. High risk patients are identified by obstetricians and given the necessary medical care. Inmates receive prenatal counseling, vitamins, and exams. They also are prescribed a prenatal diet that includes three fortified breakfast beverages per day and is adjusted for the caloric value and nutritional recommendations for pregnancy.⁷ Pregnant prisoners are transferred to a contract hospital for the actual delivery and then returned to the institution when discharged by the attending obstetrician. The DOC reports that postpartum care is provided at the institution according to the discharge orders of the attending obstetrician, but that the six-week checkup is provided by the obstetrician.⁸

The DOC reports that the pregnant prisoner population over the last three fiscal years is as follows:

- 101 prisoners in FY 2018-19.
- 98 in FY 2017-18.
- 109 in FY 2016-17.⁹

The Federal First Step Act's Prohibition on the Use of Restraints

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act” (First Step Act).¹⁰ The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, imposing a prohibition on the use of restraints on pregnant prisoners in the custody of the BOP and the U.S. Marshalls Office.

The prohibition on the use of restraints begins on the date that pregnancy is confirmed by a healthcare professional and ends when postpartum recovery is completed. However, the First Step Act authorizes restraints to be used in limited circumstances, including when the:

- Pregnant inmate is determined to be an immediate and credible flight risk;
- Pregnant inmate poses an immediate and serious threat of harm to herself or others that cannot be reasonably prevented by other means; or
- Healthcare professional determines that the use of restraints is appropriate for the medical safety of the inmate.¹¹

If one of the above-mentioned exceptions apply, the BOP or U.S. Marshall Service still may not:

- Use restraints around the ankles, legs, or waist of an inmate;
- Restrain an inmate's hands behind her back;
- Use four-point restraints; or
- Attach an inmate to another inmate.¹²

⁷ The DOC SB 852 Analysis, p. 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ The First Step Act of 2018, Pub. L. No. 115-391 (2018).

¹¹ Congressional Research Service, *The First Step Act of 2018: An Overview*, March 4, 2019, available at <https://crsreports.congress.gov/product/pdf/R/R45558> (last visited January 2, 2020). The Act provides that only the least restrictive restraints necessary to prevent escape or harm may be used if one of the exceptions applies.

¹² *Id.*

Additionally, upon the request of a healthcare professional, correctional officials or deputy marshals must refrain from using restraints on an inmate or must remove restraints used on an inmate. If restraints are used on a pregnant inmate, the correctional official or deputy marshal who used the restraints is required to submit a report within 30 days that describes the facts and circumstances surrounding the use of the restraints, including the reasons for using the restraints, the details of the use, including the type of restraint and length of time they were used, and any observable physical effects on the inmate.¹³

The First Step Act also requires the BOP and U.S. Marshall Service to develop training guidelines regarding the use of restraints on inmates during pregnancy, labor, and postpartum recovery. The guidelines are required to include:

- How to identify certain symptoms of pregnancy that require immediate referral to a healthcare professional;
- Circumstances under which exceptions to the prohibition on the use of restraints would apply;
- How to use restraints in a way that does not harm the inmate, the fetus, or the newborn in the case that an above-mentioned exception applies;
- Details on the information required to be reported when restraints are used; and
- The right of a healthcare professional to request that restraints not be used and the requirement to comply with such a request.¹⁴

The First Step Act does not include provisions related to various types of searches of or the use of restrictive housing for pregnant prisoners.

Florida's Prohibition on the Use of Restraints

Section 944.241, F.S., prohibits restraints¹⁵ from being used on a prisoner¹⁶ who is known to be pregnant during labor,¹⁷ delivery, and postpartum recovery,¹⁸ unless the corrections official¹⁹ makes an individualized determination that the prisoner presents an extraordinary

¹³ *Id.* The reports must be submitted to the BOP or U.S. Marshall Service and the healthcare provider responsible for the inmate's health and safety.

¹⁴ *Id.*

¹⁵ Section 944.241(2)(h), F.S., defines "restraints" to mean any physical restraint or mechanical device used to control the movement of a prisoner's body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield.

¹⁶ Section 944.241(2)(g), F.S., defines "prisoner" to mean any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program. Additionally, the term includes any woman detained under the immigration laws of the United States at any correctional institution.

¹⁷ Section 944.241(2)(e), F.S., defines "labor" to mean the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

¹⁸ Section 944.241(2)(f), F.S., defines "postpartum recovery" to mean, as determined by her physician, the period immediately following delivery, including the recovery period when a woman is in the hospital or infirmary following birth, up to 24 hours after delivery unless the physician after consultation with the DOC or correctional institution recommends a longer period of time.

¹⁹ Section 944.241(2)(b), F.S., defines "corrections official" to mean the official who is responsible for oversight of a correctional institution, or his or her designee.

circumstance.²⁰ This section applies to any facility under the authority of the DOC, the DJJ, a county or municipal detention facility, or a detention facility operated by a private entity.²¹

A physician may request that restraints not be used for documentable medical purposes. In that case, the correctional officer, correctional institution employee, or other officer accompanying the pregnant prisoner may consult with the medical staff and if the officer determines there is an extraordinary public safety risk, the officer is authorized to apply restraints. However, leg, ankle, or waist restraints may not be used on any pregnant prisoner who is in labor or delivery.²² If restraints are used on a pregnant prisoner, the:

- Type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and
- Corrections official is required to make written findings within ten days after the use of restraints to document the extraordinary circumstance that required the use of the restraints.²³

Leg, ankle, and waist restraints may not be used during the third trimester of pregnancy or when requested by the physician treating a pregnant prisoner unless there are significant documentable security reasons noted by the correctional institution to the contrary that would threaten the safety of the prisoner, the unborn child, or the public in general. Also, if wrist restraints are used, they must be applied in the front so the pregnant prisoner is able to protect herself in the event of a forward fall.²⁴ Any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner necessary in order to mitigate the possibility of adverse clinical consequences.²⁵

Section 944.241(4), F.S., provides that any prisoner who is restrained may file a grievance with the correctional institution and be granted a 45-day extension if requested in writing pursuant to rules promulgated by the correctional institution and that a woman harmed through the use of restraints in violation of s. 944.241, F.S., is not prohibited from filing a complaint under any other relevant provision of federal or state law.

The DOC and the DJJ are required to adopt rules to administer the provisions and must inform female prisoners of such rules upon admission to the correctional institution, including the policies and practices in the prisoner handbook, and post the policies and practices in locations in the correctional institution where such notices are commonly posted and will be seen by female prisoners, including common housing areas and medical care facilities.²⁶

The Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld. The FMJS

²⁰ Section 944.241(2)(d), F.S., defines “extraordinary circumstance” to mean a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public.

²¹ See s. 944.241(2)(a), F.S.

²² Section 944.241(3)(a), F.S.

²³ Section 944.241(3)(b), F.S. The written findings must be kept on file by the DOC or correctional institution for at least five years.

²⁴ Section 244.241(3)(c), F.S.

²⁵ Section 944.241(3)(d), F.S.

²⁶ Section 944.241(5), F.S.

Committee is required to develop and continually enforce model standards adopted by the group.²⁷ The FMJS Rule 11.15 adopts the language of s. 944.241, F.S., related to the use of restraints on pregnant inmates.

Searches of Detained Persons in Florida's Prisons and Other Facilities

Department of Corrections

There are a number of searches of inmates that are utilized to control the introduction and movement of contraband and to prevent escapes of inmates, including searches while clothed, strip searches, and body cavity searches.²⁸

Rule 33-602.204, of the Florida Administrative Code (Rule 33-602.204), in part, requires that body cavity searches must be conducted only by appropriate Health Services staff, but allows authorized staff to be of the opposite sex from the inmates.²⁹ Body orifice and cavity searches must be conducted only when authorized by the warden, assistant warden, or the correctional officer chief upon a finding that there exists reasonable cause to believe that an inmate has contraband secreted in a body cavity.³⁰

Specified procedures and conditions must apply to body orifice and cavity searches, including, in part, that:

- The degree and intensity of the search must be the least required to bring the search to a conclusion.
- Oral cavity searches may be conducted visually as a routine element of any search of an inmate.³¹
- Physical intrusion into the inmate's body³² or physical isolation and observation may be utilized in specified circumstances.³³

²⁷ The Florida Sheriff's Association (FSA), *Florida Model Jail Standards as of 1/1/2019, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited January 10, 2020) (hereinafter cited as "FMJS Rule").

²⁸ Fla. Admin. Code R. 33-602.204.

²⁹ Fla. Admin. Code R. 33-602.204(3)(a).

³⁰ Fla. Admin. Code R. 33-602(3)(b). Reasonable cause may be established from specified evidence, including confidential information received from a reliable source, irregularities found in the area of the body during a strip search, or observed actions or behavior resulting in reasonable cause to believe that the individual has secreted contraband within a body cavity.

³¹ Additionally, if there are indications that an inmate is concealing contraband in his or her mouth, the Rule states that the inmate will be restrained or be placed under constant visual observation and no restraints or holds may be applied in any manner which inhibit breathing or swallowing. However, the inmate may be physically controlled and isolated from other inmates if necessary in order to avoid his or her disposal of the contraband. When there is reasonable cause to believe contraband has been swallowed, any attempt to retrieve the contraband will be accomplished by Health Service staff. No physical intrusion into the inmate's oral cavity will be attempted by any other person other than Health Service staff.

³² Fla. Admin. Code R. 33-602(3)(c)d.3. The specified circumstances allowing physical intrusion into the body include when: a member of the Health Services staff has determined that failure to remove the contraband presents an imminent danger to the health of the inmate; the contraband is clearly identified and is determined to be a clear and present danger to the security of the institution or the safety of the inmate or other persons; or the intrusion is necessary to retrieve the contraband for purposes of identification or to secure it as evidence and less intrusive means to retrieve such contraband are not feasible.

³³ Fla. Admin. Code R. 33-602(3)(c)d.4. Physical isolation and observation are authorized when the inmate cannot or will not voluntarily remove and surrender the contraband or in the event that a Medical Doctor has determined that the physical removal of contraband may be hazardous to the health and safety of the inmate. The isolation must occur in a medically approved isolated setting under constant visual supervision until the contraband can be retrieved through natural means. The

- Prior to the initiation of the first phase of the search, and before each successive escalation of the search, the individual must be given opportunities to voluntarily remove and surrender the contraband.³⁴
- A specified correctional officer of the same sex must be physically present when the search is conducted.³⁵
- The search must be made only by a physician or a designated member of the Health Services staff working under sanitary conditions and in a medically approved way using only the force necessary to ensure the person submits to the examination.³⁶
- Complete and detailed documentation of all body cavity searches other than visual or metal detector searches must be submitted to the warden and include specified information.³⁷

Department of Juvenile Justice

The DJJ has implemented procedures for conducting searches of juveniles who are in detention as well as those that have been committed to a residential facility. Rule 63G-2.019(11), Florida Administrative Code, which addresses detention services within the DJJ, and Rule 63E-7.107, Florida Administrative Code, which addresses residential placement, provide very similar procedures for when searches of juveniles may occur.

These Rules provide, in part, that:

- The Superintendent must ensure that the primary function of any search is to locate contraband and to identify any item or situation that may be hazardous or otherwise compromise safety or security.³⁸
- All searches and the result of each search must be documented in specified documents.³⁹
- Any item or situation which may compromise safety or security must be immediately reported to the detention officer supervisor and law enforcement must be contacted if any item found would be considered illegal under Florida law or if there is evidence of any type of unlawful activity.⁴⁰

Further, the Rules provide, in part, that:

- A frisk search must be conducted by an officer of the same sex as the youth being searched and such searches must be conducted:
 - During admission.
 - Following activities outside the secure area of the facility or visitation with a person from outside of the facility.
 - Prior to and after transportation.
 - When there is a reasonable suspicion that a youth is harboring contraband.⁴¹

natural process of waste elimination must be used as an alternative to forcible intrusion into the body cavities or surgery when a Medical Doctor determines that the natural method is feasible and does not pose a hazard to the inmate's health and safety.

³⁴ Fla. Admin. Code R. 33-602(3)(c)d.6.

³⁵ Fla. Admin. Code R. 33-602(3)(c)d.7.

³⁶ Fla. Admin. Code R. 33-602(3)(c)d.9.-10.

³⁷ Fla. Admin. Code R. 33-602(3)(c)d.12.

³⁸ Fla. Admin. Code R. 63G-2.019(11)(a); Fla. Admin. Code R. 63E-7.107(2)(b).

³⁹ Fla. Admin. Code R. 63G-2.019(11)(b); Fla. Admin. Code R. 63E-7.107(2)(a).

⁴⁰ Fla. Admin. Code R. 63G-2.019(11)(d). These provisions do not appear in Rule 63E-7.107.

⁴¹ Fla. Admin. Code R. 63G-2.019(11)(e); *See* Fla. Admin. Code R. 63E-7.107(2)(a) and (b).

- Strip searches must be conducted during admission or if there is a reasonable suspicion a youth is harboring contraband and the strip search must be conducted in a private area with two staff members present, both of the same sex as the youth being searched.⁴²
- Staff must explain the purpose and procedure of the search, assure the youth of his or her safety, avoid using unnecessary force, and treat the youth with dignity and respect to minimize the youth's stress and embarrassment.⁴³
- Staff may not search or physically examine a transgender or intersex youth for the sole purpose of determining the youth's genital status.⁴⁴
- Cavity searches must be approved by the Superintendent, conducted by trained medical personnel in a hospital setting, and only conducted when it is strongly suspected that a youth has concealed contraband in a body cavity.⁴⁵

County Detention Facilities

The FMJS also had model standards for conducting searches on inmates in the custody of a county detention facility. FMJS Rules 4.2 and 4.3, provide that inmates must be searched by certified staff when being admitted to a detention facility and that the provisions of s. 901.211, F.S., must apply to such searches. Additionally, a body cavity search is only authorized to be conducted by licensed medical personnel.⁴⁶

Section 901.211, F.S., in part, provides that a person arrested for a traffic, regulatory, or misdemeanor offense, except in a case which is violent in nature, which involves a weapon, or which involves a controlled substance, may not be strip searched⁴⁷ unless certain circumstances apply.⁴⁸ Each strip search is required to be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons not physically conducting or observing the search. Additionally, an observer must be of the same gender as the arrested person.⁴⁹ Any body cavity search must be performed under sanitary conditions.⁵⁰

⁴² See Fla. Admin. Code R. 63G-2.019(11)(e)4. and 5.; Fla. Admin. Code R. 63E-7.107(2)(a). A strip search is a visual check of a youth without clothing. Both of these Rules also provide that if two staff of the same sex as the youth are not available that one staff of the same sex as the youth may conduct the strip search while a staff of the opposite sex is positioned to observe the staff person conducting the search outside the view of the youth.

⁴³ Fla. Admin. Code R. 63G-2.019(11)(e)6.; Fla. Admin. Code R. 63E-7.107(2).

⁴⁴ Fla. Admin. Code R. 63G-2.019(11)(e)7. Further, if the youth's genital status is unknown, it may be determined during conversation with the youth, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner. Rule 63E-7.107 is silent on this provision.

⁴⁵ Fla. Admin. Code R. 63G-2.019(11)(e)8.; Fla. Admin. Code R. 63E-7.107(2)(c).

⁴⁶ FMJS Rule 4.2 and 4.3. A written report documenting such action must be submitted to the Officer-in-Charge or designee.

⁴⁷ Section 901.211(1), F.S., defines the term "strip search" to mean having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.

⁴⁸ See s. 901.211(2), F.S.

⁴⁹ Section 901.211(3), F.S.

⁵⁰ Section 901.211(4), F.S.

Confinement in Florida's Correctional Facilities

Department of Corrections

Confinement - General

Inmates in the custody of the DOC may be placed in confinement status based on specified conditions, which are detailed in the DOC's rules. Confinement status types used by the DOC include administrative or disciplinary confinement and protective management. "Administrative confinement" means the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.⁵¹ "Disciplinary confinement" means a form of punishment in which inmates found guilty of committing violations of the DOC rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct.⁵² "Protective management" means a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible.⁵³

All inmates are subject to the same consideration for placement in administrative or disciplinary confinement. These types of confinement may limit conditions and privileges to assist with promoting the security, order, and effective management of the institution, but otherwise the treatment of inmates in confinement is as near to that of the general population as assignment to confinement permits.⁵⁴ For protective management, the Rule provides that other privileges may be restricted on a daily case-by-case basis when such restrictions are necessary for the security, order, or effective management of the institution.⁵⁵

Certain procedures appear to apply consistently across all types of confinement, such as:

- Prior to placing the inmate in confinement, the inmate is given a pre-confinement health assessment or medical evaluation.⁵⁶
- The ability to house inmates in confinement with other inmates, subject to the inmates being interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other prior to placing inmates in the same cell.⁵⁷

⁵¹ Fla. Admin. Code R. 33-602.220(1)(a).

⁵² Fla. Admin. Code R. 33-602.222(1)(f).

⁵³ Fla. Admin. Code R. 33-602.221(1)(j). Protective management is not disciplinary in nature and, to the extent possible, all less restrictive avenues to address protection needs must be employed.

⁵⁴ Fla. Admin. Code R. 33-602.220(5); Fla. Admin. Code R. 33-602.221(2)(a) and (4); and Fla. Admin. Code R. 33-602.222(4).

⁵⁵ Fla. Admin. Code R. 33-602.221(4)(t). All such restrictions must be documented on a specified form and reported to the ICT. The ICT is authorized to restrict privileges on a continuing basis after a determination that such restrictions are necessary for the security, order or effective management of the institution. The ICT's decision for continuing restriction must also be documented on a specified form.

⁵⁶ See Fla. Admin. Code R. 33-602.220(2)(b) and (c) and Fla. Admin. Code R. 33-602.222(2)(a). An inmate does not have to be given the pre-confinement evaluation if he or she is currently in another confinement status that required a pre-confinement medical assessment. Rule 33-602.221, related to protective management is silent on whether a pre-confinement evaluation is necessary.

⁵⁷ Fla. Admin. Code R. 33-602.220(4)(a); Fla. Admin. Code R. 33-602.221(3)(a); and Fla. Admin. Code R. 33-602.222(3).

- The number of inmates housed in an administrative confinement cell must not exceed the number of bunks in the cell.⁵⁸

Inmates in confinement retain certain modified privileges, as mentioned above. For example, such inmates are provided:

- Exercise, which occurs either in the inmate's cell if confined on a 24-hour basis or, if confinement extends beyond a 30-day period, three hours per week of exercise at a minimum outdoors.
- Showers at least three times per week and on days that the inmate works.
- Normal institution meals.⁵⁹
- The same clothing and clothing exchange as is provided to the general inmate population.⁶⁰
- Out of cell time is permitted for regularly scheduled mental health services, unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.
- Correspondence opportunities which are the same as the general inmate population.
- Telephone privileges for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.
- Visits, when authorized by the warden or his or her designated representative.
- Legal visits, unless there is evidence that the visit is a threat to security and order.⁶¹
- Legal materials in the same manner as in the general population as long as security concerns permit.^{62, 63}

Administrative Confinement

Florida Administrative Rule 33-602.220 provides that an inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate's request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.

⁵⁸ Fla. Admin. Code R. 33-602.220(4)(a) and (d); Fla. Admin. Code R. 33-602.221(3); and Fla. Admin. Code R. 33-602.222(3)(a).

⁵⁹ The exception to this is when an item on the normal menu creates a security problem in the confinement unit, in which case, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

⁶⁰ The exception to this is when there is an individual factual basis that exceptions are necessary for the welfare of the inmate or the security of the institution.

⁶¹ The warden or his or her designee must approve all legal visits in advance.

⁶² An inmate in confinement may be required to conduct legal business by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

⁶³ Fla. Admin. Code R. 33-602.220(5); 33-602.221(4); and 33-602.222(4).

- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.⁶⁴

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in the case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in the case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer, and a member of the Institutional Classification Team (ICT).⁶⁵

An inmate is assessed weekly to determine the appropriateness of placement with the goal of returning the inmate to general population as soon as the facts of the case indicate that such return can be done safely.⁶⁶ Other assessment requirements that are applicable to inmates who have been confined for more than 30 days include:

- A psychological screening assessment by a mental health professional to determine his or her mental condition.⁶⁷
- An interview by the ICT, who must prepare a formal assessment and evaluation report after each 30 day period in administrative confinement.⁶⁸

Disciplinary Confinement

Staff are required to conduct regular visits to disciplinary confinement in the same frequency as mentioned above related to administrative confinement with the addition of specific visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.

⁶⁴ Fla. Admin. Code R. 33-602.220(3).

⁶⁵ Fla. Admin. Code R. 33-602.220(4).

⁶⁶ Fla. Admin. Code R. 63-602.220(8)(a).

⁶⁷ Fla. Admin. Code R. 33.602.220(8)(b). The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

⁶⁸ Fla. Admin. Code R. 33-602.220(8)(c) and (d). Additionally, the State Classification Office (SCO) reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate's administrative confinement status.

- As frequently as necessary by the State Classification Officer (SCO) to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.⁶⁹

Department of Juvenile Justice

The DJJ does not use solitary confinement with youth that are in the custody of its secure detention centers⁷⁰ or residential commitment programs.⁷¹ Section 985.03(7), F.S., defines a “child” or “juvenile” or “youth” to mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.

The DJJ, in conjunction with the Annie E. Casey Foundation, has implemented the Juvenile Detention Alternatives Initiative (JDAI). JDAI is the most widely recognized set of national best practices on the practices and conditions inside juvenile justice facilities. The JDAI Standards provide that solitary confinement can never be used for purposes of punishment or discipline and must be limited to periods of less than four hours.⁷²

The DJJ does use short-term supervised confinement, precautionary observation, and secure and controlled observation for youth presenting an immediate danger to themselves or others in its detention and residential facilities. Additionally, medical confinement is used for youth who present with a communicable disease that may infect others.⁷³

Detention Facilities

The applicable DJJ Rules provide definitions related to types of confinement, including behavioral confinement and medical confinement. “Behavioral confinement” is defined to mean placement of a youth in a secure room during volatile situations in which a youth’s sudden or unforeseen onset of behavior imminently and substantially threatens the physical safety of others or himself or herself.⁷⁴ “Medical confinement” is defined to mean the placement of a youth in a

⁶⁹ Fla. Admin. Code R. 33-602.222(7). Fla. Admin. Code R. 33-602.222(1)(l) provides that the SCO refers to the office or office staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations.

⁷⁰ Section 985.03(19), F.S., defines “detention center or facility” to mean a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents is not considered a detention center or facility.

⁷¹ Section 985.43, F.S., provides that upon adjudication of a delinquency case a court may commit a youth to the DJJ for placement in a residential commitment program. Section 985.03(44), F.S., which defines “restrictiveness level,” addresses the different levels of commitment programs, including, in part, “minimum-risk nonresidential,” “nonsecure residential,” and “high-risk residential.”

⁷² See JDAI, A Project of the Annie E. Casey Foundation, *Revised JDAI Standards, Standards Instrument, 2014 Update*, p. 6, December 2014, available at <http://www.cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf> (last visited January 10, 2020).

⁷³ The DJJ, *SB 624 Agency Analysis*, p. 2, January 31, 2019 (on file with the Senate Committee on Criminal Justice)(hereinafter cited as “The DJJ SB 624 Analysis”)[SB 624 (2019) addressed confinement for youth in the custody of the DOC, the DJJ, and county detention facilities]; See also Fla. Admin. Code Chs. 63E-7, 63G-2, and 63N-1.

⁷⁴ Fla. Admin. Code R. 63G-2.014(7).

secure room to allow the youth to rest and recover from illness and/or prevents the spread of a communicable illness (i.e. flu, H1N1 virus, etc.).⁷⁵

Additionally, confinement may not be used to harass, embarrass, demean, or otherwise abuse a youth. The use of confinement must be monitored by the Superintendent or designee and the time limit for placement of a youth in confinement is no more than eight hours unless the superintendent or his or her designee grants an extension because release of the youth would imminently threaten his or her safety or the safety of others. The Regional Director or designee must review and grant any confinement extended beyond 24 hours, and, if granted, must notify the Assistant Secretary or designee.⁷⁶

A confinement report must be submitted by the detention officer as soon as possible, but no later than one hour after the youth's confinement. The confinement report must be reviewed by the detention officer's supervisor as soon as possible, but no later than two hours after the youth's confinement. The detention officer supervisor must evaluate and document the youth's status, at a minimum, every three hours to determine if the continued confinement of the youth is required. A youth is prohibited from being held in confinement beyond 72 hours without a confinement hearing.⁷⁷

Residential Commitment Facilities

The applicable DJJ Rules to residential facilities prohibits a residential commitment program's behavior management system from including disciplinary confinement, wherein a youth is isolated in a locked room, as discipline for misbehavior.⁷⁸ A residential commitment program may use room restriction, which is described to mean temporarily restricting the youth's participation in routine activities by requiring the youth to remain in his or her sleeping quarters, when:

- A youth is out of control or a suicide risk.
- A supervisor has given prior approval for each use of room restriction.
- It does not exceed four hours and the door to the room remains open to facilitate staff supervision.
- Staff engages, or attempts to engage, the youth in productive interactions at least every 30 minutes.
- The program does not deny a youth basic services, such as regular meals and physical or mental health services.
- The program staff uses strategies, such as conflict resolution and constructive dialogue, to facilitate the youth's reintegration into the general population.⁷⁹

The program documents certain details for each case of room restriction, including:

- A description of the behavior that resulted in room restriction;
- The date and time room restriction was implemented;

⁷⁵ Fla. Admin. Code R. 63G-2.014(50). The use of medical confinement is not intended as punishment or discipline and is ordered by the Designated Health Authority.

⁷⁶ Fla. Admin. Code R. 63G-2.022(4).

⁷⁷ Fla. Admin. Code R. 63G-2.022(4).

⁷⁸ Fla. Admin. Code R. 63E-7.009(3)(e).

⁷⁹ Fla. Admin. Code R. 63E-7.009(4).

- The name of the staff person who recommended the use of room restriction and the name of the approving supervisor;
- The name of the staff person removing the youth from room restriction;
- The date and time of removal and a description of the youth's behavior and attitude upon removal; and
- Follow-up actions taken or attempted to help re-integrate the youth back into the general population when released from room restriction.⁸⁰

A residential commitment program must ensure that staff observe a youth at least every ten minutes while in their sleeping quarters, including when on room restriction. Staff must conduct the observations in a manner to ensure the safety and security of each youth and document real time observations manually or electronically.⁸¹

Further, a residential commitment program may use controlled observation only when necessary and as a last resort.⁸² Controlled observation is defined to mean an immediate, short-term crisis management strategy, not authorized for use as punishment or discipline, wherein a youth in a residential commitment program is placed in a separate, identified, safe, and secure room.⁸³ Such specified programs are authorized to temporarily place a youth in a controlled observation room only in the following situations when non-physical interventions would not be effective:

- Emergency safety situations where there is imminent risk of the youth physically harming himself or herself, staff, or others; or
- When the youth is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the youth's safety or the safety of others.⁸⁴

Controlled observation has a maximum time limit of two hours, that can be extended by the program director in two-hour increments for no longer than 24 hours. Youth who are in controlled observation receive the standard 10-minute sight and sound check along with documentation of their behavior in 15-minute intervals.⁸⁵

A supervisor with delegated authority must give prior authorization for each use of controlled observation unless the delay caused by seeking prior approval would further jeopardize the safety of others and the program's security. Staff is prohibited from leaving a youth alone in a controlled observation room until an inspection of the room is conducted and it is deemed safe, secure, and in compliance with specified guidelines.⁸⁶ The Rule further provides specific

⁸⁰ *Id.* Further, Rule 63E-7.011, F.A.C., provides that a youth is prohibited from large muscle exercise when he or she is temporarily separated from the general population, including when placed on controlled observation or room restriction status pursuant to Rule 63E-7.013, F.A.C. However, if a youth is restricted to a room, the program must give the youth an opportunity for large muscle exercise as soon as is reasonably possible after the youth is reintegrated into the general population.

⁸¹ Fla. Admin. Code R. 63E-7.013(3)(b).

⁸² Fla. Admin. Code R. 63E-7.013(16).

⁸³ Fla. Admin. Code R. 63E-7.002(20).

⁸⁴ Fla. Admin. Code R. 63E-7.013(16).

⁸⁵ The DJJ SB 624 Agency Analysis, p. 2.

⁸⁶ *Id.*

procedures for how to address a youth whose health or safety deteriorates once placed into controlled observation.⁸⁷

The Rule prohibits the use of controlled observation as punishment or discipline.⁸⁸

County Detention Facilities

The FMJS defines terms such as administrative confinement and disciplinary confinement. “Administrative confinement” is defined to mean the segregation of an inmate for investigation, protection, or some cause other than disciplinary action.⁸⁹ “Disciplinary confinement” is defined to mean the segregation of an inmate for disciplinary reasons.⁹⁰

The FMJS provides that inmates may be placed in administrative confinement for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility. The Rule requires an incident report or disciplinary report to follow the action that prompted placement in administrative confinement. Additionally, the time of release for inmates in disciplinary or administrative confinement must be recorded and filed in the inmate’s file.⁹¹

Each inmate in administrative confinement must receive housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to the general population except as justified by his or her classification status or special needs inmate status.^{92, 93} Further, special needs inmates should be checked by medical staff at intervals not exceeding 72 hours and inmates in administrative or disciplinary confinement must bathe twice weekly.⁹⁴ The FMJS provides that the Officer-in-Charge or designee must see and talk to each inmate in disciplinary or administrative confinement at least once each morning and once each afternoon and document the inmate’s general condition and attitude at each visit.⁹⁵

Additionally, the FMJS requires that an inmate confined in an isolation cell used for medical purposes be examined by a physician or designee within 48 hours following his or her confinement in such area or cell. A physician or designee must determine when the inmate will be returned to the general population. The inmate must remain in isolation if the physician or designee:

- Finds that the inmate presents a serious risk to himself or others; or

⁸⁷ See Fla. Admin. Code R. 63E-7.013(16)(e)-(i). For example, a youth must be immediately removed from the controlled observation room and provided follow-up mental health services if he or she begins demonstrating acute psychological distress or suicide risk behaviors subsequent to placement in controlled observation.

⁸⁸ Fla. Admin. Code R. 63E-7.001(20).

⁸⁹ The FMJS Rule 1.2.

⁹⁰ The FMJS Rule 1.17.

⁹¹ The FMJS Rule 13.13.

⁹² *Id.*

⁹³ The FMJS Rule 5.4 defines “special needs inmates” as “inmates who have been determined by the health authority to be mentally ill, suicidal, alcoholic or drug addicted going through withdrawal and in need of close monitoring.”

⁹⁴ The FMJS Rule 13.13.

⁹⁵ The FMJS Rule 13.14.

- Continues to provide the inmate with follow-up medical care and treatment during the entire time that the inmate remains confined in such area or cell as deemed necessary.⁹⁶

Florida law and the rules of the DOC, the DJJ, and the FMJS do not appear to address restrictive housing of pregnant prisoners in separate provisions.

III. Effect of Proposed Changes:

The bill amends s. 944.241, F.S., modifying current provisions for using restraints on a pregnant prisoner and prescribing procedures for when a pregnant prisoner may be subject to an invasive body cavity search or placed in restrictive housing.

Additionally, the bill renames the Act the “Tammy Jackson Healthy Pregnancies for Incarcerated Women Act.”

Definitions

The bill amends the definitions section to:

- Expand the term “extraordinary circumstance” to apply to the exceptions of circumstances that dictate the use of restrictive housing in addition to the use of restraints.
- Add the definitions:
 - “Invasive body cavity search,” which means a search that involves a manual inspection using touch, insertion, or probing of the openings, cavities, and orifices of the human body, including, but not limited to the genitals, buttocks, anus, or breasts that is not conducted for a medical purpose; and
 - “Restrictive housing,” which means the placement of pregnant prisoners separately from the general population of a correctional institution and imposing restrictions on their movement, behavior, and privileges solely based on the condition of being pregnant. The term includes placing the prisoner in medical isolation or in the infirmary.

Use of Restraints

The bill expands the prohibition of using restraints on a pregnant prisoner under current law to cover when a pregnant prisoner, at any point in her known pregnancy, is being transported. The bill prescribes that restraints may not be used:

- If any doctor, nurse, or other health professional treating the prisoner in labor, in delivery, or in postpartum recovery requests that restraints not be used due to a documentable medical purpose. If the doctor, nurse, or other health professional makes such a request, the correctional officer or other law enforcement officer accompanying the prisoner must immediately remove all restraints.
- During *transport*, labor, delivery, and postpartum recovery, unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.

⁹⁶ The FMJS Rule 7.23.

The bill provides an exception to the prohibition on the use of restraints, which specifically provides that:

- A restraint may be used on a pregnant prisoner or a prisoner who is in postpartum recovery only if all of the following apply:
 - The corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.
 - The restraints used are the least restrictive necessary.
 - If wrist restraints are used, the restraints are applied in the front of the prisoner so that she may protect herself in the event of a forward fall.
- A pregnant prisoner who is transported by a correctional institution must be transported using a restraint that is the least restrictive necessary.

Current law remains the same as it relates to the requirement that the corrections official must provide written findings when restraints are used on a pregnant prisoner due to an extraordinary circumstance that dictated the use of the restraints.

Invasive Body Cavity Searches

The bill provides that an invasive body cavity search of a pregnant prisoner may only be conducted by a medical professional, unless a correctional officer has a reasonable belief that the prisoner is concealing contraband. The bill requires that an officer who conducts an invasive body cavity search submit a written report to the corrections official within 72 hours after the search, which must:

- Explain the reasons for the search; and
- Identify any contraband recovered in the search.

Restrictive Housing

The bill prohibits, with limited exceptions, a pregnant prisoner from being involuntarily placed in restrictive housing. However, the bill provides that a corrections official is not prohibited from placing a pregnant prisoner in restrictive housing for disciplinary violations or to address security risks to the pregnant prisoner, other prisoners, or staff directly related to the pregnant prisoner provided the corrections official complies with the requirements discussed below.

The only exception provided for in the bill authorizes a pregnant prisoner to be involuntarily placed in restrictive housing if the corrections official of the correctional institution, in consultation with the individual overseeing prenatal care and medical treatment at the correctional institution, determines that an extraordinary circumstance exists such that restrictive housing is necessary and that there are no less restrictive means available.

The bill requires the corrections official to, *before* placing a prisoner in restrictive housing, write a report that states:

- The extraordinary circumstance that is present; and
- The reason less restrictive means are not available.

The corrections official is required to review the report at least every 24 hours to confirm that the extraordinary circumstances cited in the report still exist and a copy of the report and each review must be provided to the prisoner.

A pregnant prisoner who is placed in restrictive housing under s. 944.241, F.S., must be:

- Examined at least every eight hours by the person overseeing prenatal care and medical treatment in the facility;
- Housed in the least restrictive setting consistent with the health and safety of the individual; and
- Given an intensive treatment plan developed and approved by the person overseeing prenatal care and medical treatment at the facility.

In the case that a pregnant prisoner needs infirmary care, the bill requires an authorized medical staff to provide an order for the prisoner to be admitted to the infirmary. Further, if the prisoner has passed her due date, she must be admitted to the infirmary until labor begins or until the obstetrician makes other housing arrangements. The bill provides that a pregnant prisoner who has been placed in the infirmary must be provided:

- The same access to outdoor recreation, visitation, mail, and telephone calls as other prisoners; and
- The ability to continue to participate in other privileges and classes granted to the general population.

The bill amends s. 944.215(7), F.S., deleting a date related to the rulemaking authority, therefore providing the entities covered under the section with the necessary rulemaking authority to implement the changes made by the act.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires that the DOC, DJJ, and county and municipal detention facilities comply with new standards for using restraints with, conducting invasive body cavity searches on, and placing in restrictive housing pregnant prisoners. These new standards require that specific staff document the extraordinary circumstance leading to the utilization of the enumerated exceptions to the use of restraints or restrictive housing with pregnant prisoners and to conduct reviews of the extraordinary circumstance that is the basis for the exception. The prisoner must be reviewed every eight hours and must also be placed in the infirmary in certain circumstances. To the effect that these provisions require the DOC, DJJ, or detention facilities to hire additional staff to comply, the bill may result in a positive fiscal impact (i.e. increase) to such entities as a result of an increased workload.

In addition, the DOC reports that there is an estimated technology cost of \$17,400 related to changes to the Offender Based Information System that are necessary to include changes to location, restrictions, disciplinary reports and penalties, and changes to the current intake and processing for pregnant inmates.⁹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 944.241 of the Florida Statutes.

⁹⁷ The DOC SB 852 Analysis, p. 9-10.

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 January 14, 2020:

The committee substitute:

- Renames the Act the “Tammy Jackson Healthy Pregnancies for Incarcerated Women Act”;
- Modifies the term “extraordinary circumstance” to apply to restraints and restrictive housing;
- Defines the terms “invasive body cavity search” and “restrictive housing”;
- Expands the prohibition on using restraints on pregnant prisoners to cover a pregnant prisoner at any point in her pregnancy if she is being transported;
- Provides an exception to when restraints can be used on a pregnant prisoner and requires the corrections official to document the reasons why restraints were necessary;
- Prohibits invasive body cavity searches on a pregnant prisoner and provides an exception for when a correctional officer can conduct such a search;
- Prohibits a corrections institution from placing a pregnant prisoner in restrictive housing just as a result of the condition of being pregnant;
- Provides exceptions to when restrictive housing can be used on a pregnant prisoner and requires the corrections official to document the reasons why restrictive housing was necessary;
- Requires a corrections official to examine a pregnant prisoner placed into restrictive housing every eight hours to ensure the restrictive housing is still necessary;
- Requires pregnant prisoners placed in the infirmary for restrictive housing to be provided the same rights as in the general population; and
- Provides rulemaking authority.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
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The Committee on Criminal Justice (Pizzo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 944.241, Florida Statutes, is amended to
read:

944.241 ~~Shackling of~~ Incarcerated pregnant women.—

(1) SHORT TITLE.—This section may be cited as the "Tammy Jackson Healthy Pregnancies for Incarcerated Women Act."

(2) DEFINITIONS.—As used in this section, the term:



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11 (a) "Correctional institution" means any facility under the
12 authority of the department or the Department of Juvenile
13 Justice, a county or municipal detention facility, or a
14 detention facility operated by a private entity.

15 (b) "Corrections official" means the official who is
16 responsible for oversight of a correctional institution, or his
17 or her designee.

18 (c) "Department" means the Department of Corrections.

19 (d) "Extraordinary circumstance" means a substantial flight
20 risk or some other extraordinary medical or security
21 circumstance that dictates restraints or restrictive housing be
22 used to ensure the safety and security of the prisoner, the
23 staff of the correctional institution or medical facility, other
24 prisoners, or the public.

25 (e) "Invasive body cavity search" means a search that
26 involves a manual inspection using touch, insertion, or probing
27 of the openings, cavities, and orifices of the human body,
28 including, but not limited to the genitals, buttocks, anus, or
29 breasts that is not conducted for a medical purpose.

30 (f)-(e) "Labor" means the period of time before a birth
31 during which contractions are of sufficient frequency,
32 intensity, and duration to bring about effacement and
33 progressive dilation of the cervix.

34 (g)-(f) "Postpartum recovery" means, as determined by her
35 physician, the period immediately following delivery, including
36 the recovery period when a woman is in the hospital or infirmary
37 following birth, up to 24 hours after delivery unless the
38 physician after consultation with the department or correctional
39 institution recommends a longer period of time.



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40 (h)~~(g)~~ "Prisoner" means any person incarcerated or detained
41 in any correctional institution who is accused of, convicted of,
42 sentenced for, or adjudicated delinquent for a violation of
43 criminal law or the terms and conditions of parole, probation,
44 community control, pretrial release, or a diversionary program.
45 For purposes of this section, the term includes any woman
46 detained under the immigration laws of the United States at any
47 correctional institution.

48 (i)~~(h)~~ "Restraints" means any physical restraint or
49 mechanical device used to control the movement of a prisoner's
50 body or limbs, including, but not limited to, flex cuffs, soft
51 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
52 irons, belly chains, a security or tether chain, or a convex
53 shield.

54 (j) "Restrictive housing" means the placement of pregnant
55 prisoners separately from the general population of a
56 correctional institution and imposing restrictions on their
57 movement, behavior, and privileges solely based on the condition
58 of being pregnant. The term includes placing the prisoner in
59 medical isolation or in the infirmary.

60 (3) RESTRAINT OF PRISONERS.—

61 (a) Except as provided in paragraph (b), restraints may not
62 be used on a prisoner who is known to be pregnant:

63 1. If any doctor, nurse, or other health professional
64 treating the prisoner in labor, in delivery, or in postpartum
65 recovery requests that restraints not be used due to a
66 documentable medical purpose. If the doctor, nurse, or other
67 health professional makes such a request, the correctional
68 officer or other law enforcement officer accompanying the



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69 prisoner must immediately remove all restraints.

70 2. During transport, labor, delivery, or and postpartum
71 recovery, unless the corrections official makes an
72 individualized determination that the prisoner presents an
73 extraordinary circumstance., except that:

74 ~~1. The physician may request that restraints not be used~~
75 ~~for documentable medical purposes. The correctional officer,~~
76 ~~correctional institution employee, or other officer accompanying~~
77 ~~the pregnant prisoner may consult with the medical staff;~~
78 ~~however, If the corrections official officer determines there is~~
79 ~~an extraordinary public safety risk, the official may officer is~~
80 ~~authorized to apply restraints as limited by paragraph (b)~~
81 ~~subparagraph 2.~~

82 (b) A restraint may be used on a prisoner who is known to
83 be pregnant or in postpartum recovery only if all of the
84 following apply:

85 1. The corrections official makes an individualized
86 determination that the prisoner presents an extraordinary
87 circumstance.

88 2. The restraints used are the least restrictive necessary.

89 3. If wrist restraints are used, the restraints are applied
90 in the front of the prisoner so that she may protect herself in
91 the event of a forward fall.

92 ~~4.2. Under no circumstances shall Leg, ankle, or waist~~
93 ~~restraints are not be used on any pregnant prisoner who is in~~
94 ~~labor or delivery.~~

95 ~~(b) If restraints are used on a pregnant prisoner pursuant~~
96 ~~to paragraph (a):~~

97 ~~1. The type of restraint applied and the application of the~~



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98 ~~restraint must be done in the least restrictive manner~~
99 ~~necessary; and~~

100 (c)2. The corrections official shall make written findings
101 within 10 days after the use of restraints as to the
102 extraordinary circumstance that dictated the use of the
103 restraints. These findings shall be kept on file by the
104 department or correctional institution for at least 5 years.

105 (d) A pregnant prisoner who is transported by a
106 correctional institution must be transported using a restraint
107 that is the least restrictive necessary. A correctional
108 institution that uses restraints on a pregnant prisoner during
109 transport must comply with the written findings required in
110 paragraph (c).

111 ~~(c) During the third trimester of pregnancy or when~~
112 ~~requested by the physician treating a pregnant prisoner, unless~~
113 ~~there are significant documentable security reasons noted by the~~
114 ~~department or correctional institution to the contrary that~~
115 ~~would threaten the safety of the prisoner, the unborn child, or~~
116 ~~the public in general:~~

117 ~~1. Leg, ankle, and waist restraints may not be used; and~~

118 ~~2. If wrist restraints are used, they must be applied in~~
119 ~~the front so the pregnant prisoner is able to protect herself in~~
120 ~~the event of a forward fall.~~

121 ~~(d) In addition to the specific requirements of paragraphs~~
122 ~~(a) (c), any restraint of a prisoner who is known to be pregnant~~
123 ~~must be done in the least restrictive manner necessary in order~~
124 ~~to mitigate the possibility of adverse clinical consequences.~~

125 (4) INVASIVE BODY CAVITY SEARCHES.—

126 (a) Except as provided under paragraph (b), an invasive



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127 body cavity search of a pregnant prisoner may be conducted only
128 by a medical professional.

129 (b) A correctional officer may conduct an invasive body
130 cavity search of a pregnant prisoner only if the officer has a
131 reasonable belief that the prisoner is concealing contraband. An
132 officer who conducts an invasive body cavity search must submit
133 a written report to the corrections official within 72 hours
134 after the search. The report must:

- 135 1. Explain the reasons for the search; and
136 2. Identify any contraband recovered in the search.

137 (5) RESTRICTIVE HOUSING.—

138 (a) Except as provided in paragraph (b), a pregnant
139 prisoner may not be involuntarily placed in restrictive housing.
140 This subsection does not prohibit a corrections official from
141 placing a pregnant prisoner in restrictive housing for
142 disciplinary violations or to address security risks to the
143 pregnant prisoner, other prisoners, or staff directly related to
144 the pregnant prisoner provided the corrections official complies
145 with the reporting requirements of sub-subparagraph (b)1.

146 (b) A pregnant prisoner may be involuntarily placed in
147 restrictive housing only if the corrections official of the
148 correctional institution, in consultation with the medical staff
149 overseeing prenatal care and medical treatment at the
150 correctional institution, determines that an extraordinary
151 circumstance exists such that restrictive housing is necessary
152 and that there are no less restrictive means available.

153 1. The corrections official shall, before placing a
154 prisoner in restrictive housing, write a report that states:

- 155 a. The extraordinary circumstance that is present; and



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156 b. The reason less restrictive means are not available.

157 2. The corrections official shall review the report at
158 least every 24 hours to confirm that the extraordinary
159 circumstance cited in the report still exist. A copy of the
160 report and each review must be provided to the pregnant
161 prisoner.

162 (c) A pregnant prisoner who is placed in restrictive
163 housing under this section shall be:

164 1. Examined at least every 8 hours by the medical staff
165 overseeing prenatal care and medical treatment in the facility;

166 2. Housed in the least restrictive setting consistent with
167 the health and safety of the pregnant prisoner; and

168 3. Given an intensive treatment plan developed and approved
169 by the medical staff overseeing prenatal care and medical
170 treatment at the facility.

171 (d) If a pregnant prisoner needs infirmary care, an
172 authorized medical staff must provide an order for the pregnant
173 prisoner to be admitted to the infirmary. If the pregnant
174 prisoner has passed her due date, she must be admitted to the
175 infirmary until labor begins or until other housing arrangements
176 are made. A pregnant prisoner who has been placed in the
177 infirmary shall be provided:

178 1. The same access to outdoor recreation, visitation, mail,
179 and telephone calls as other prisoners; and

180 2. The ability to continue to participate in other
181 privileges and classes granted to the general population.

182 (6)-(4) ENFORCEMENT.—

183 (a) Notwithstanding any relief or claims afforded by
184 federal or state law, any prisoner who is restrained in



203040

185 violation of this section may file a grievance with the
186 correctional institution, and be granted a 45-day extension if
187 requested in writing pursuant to rules promulgated by the
188 correctional institution.

189 (b) This section does not prevent a woman harmed through
190 the use of restraints under this section from filing a complaint
191 under any other relevant provision of federal or state law.

192 ~~(7)~~ (5) NOTICE TO PRISONERS.—

193 (a) ~~By September 1, 2012,~~ The department and the Department
194 of Juvenile Justice shall adopt rules pursuant to ss. 120.536(1)
195 and 120.54 to administer this section.

196 (b) Each correctional institution shall inform female
197 prisoners of the rules developed pursuant to paragraph (a) upon
198 admission to the correctional institution, including the
199 policies and practices in the prisoner handbook, and post the
200 policies and practices in locations in the correctional
201 institution where such notices are commonly posted and will be
202 seen by female prisoners, including common housing areas and
203 medical care facilities.

204 Section 2. This act shall take effect July 1, 2020.

205 ===== T I T L E A M E N D M E N T =====

206 And the title is amended as follows:

207 Delete everything before the enacting clause
208 and insert:

209 A bill to be entitled
210 An act relating to incarcerated pregnant women;
211 amending s. 944.241, F.S.; amending the short title;
212 redefining the term "extraordinary circumstance";
213 defining the terms "invasive body cavity search" and



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214 "restrictive housing"; revising the circumstances
215 under which a prisoner who is known to be pregnant may
216 not be restrained; specifying conditions under which
217 restraints may be used; requiring that invasive body
218 cavity searches on a pregnant prisoner be conducted by
219 a medical professional; providing an exception;
220 prohibiting the involuntary placement of pregnant
221 prisoners in restrictive housing; providing
222 exceptions; requiring corrections officials to write a
223 specified report if an extraordinary circumstance
224 necessitates placing a pregnant prisoner in
225 restrictive housing; providing requirements for the
226 report; requiring corrections officials to review such
227 reports at specified intervals; requiring a copy of
228 such reports and reviews to be provided to pregnant
229 prisoners in restrictive housing; providing
230 requirements for the treatment of pregnant prisoners
231 placed in restrictive housing; requiring pregnant
232 prisoners to be admitted to the infirmary under
233 certain circumstances; providing certain rights for
234 pregnant prisoners admitted to the infirmary;
235 providing an effective date.

By Senator Pizzo

38-00969-20

2020852__

1 A bill to be entitled
 2 An act relating to restrictive housing for
 3 incarcerated pregnant women; amending s. 944.241,
 4 F.S.; defining the term "restrictive housing";
 5 prohibiting the involuntary placement of pregnant
 6 prisoners in restrictive housing; providing
 7 exceptions; requiring corrections officials to write a
 8 specified report if an extraordinary circumstance
 9 necessitates placing a pregnant prisoner in
 10 restrictive housing; providing requirements for the
 11 report; requiring corrections officials to review such
 12 reports at specified intervals; requiring a copy of
 13 such reports and reviews to be provided to pregnant
 14 prisoners in restrictive housing; providing
 15 requirements for the treatment of pregnant prisoners
 16 placed in restrictive housing; requiring pregnant
 17 prisoners to be admitted to the infirmary under
 18 certain circumstances; providing certain rights for
 19 pregnant prisoners admitted to the infirmary;
 20 providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 944.241, Florida Statutes, is amended to
 25 read:

26 944.241 ~~Shackling of~~ Incarcerated pregnant women;
 27 restraints; involuntary medical isolation.-

28 (1) SHORT TITLE.-This section may be cited as the "Healthy
 29 Pregnancies for Incarcerated Women Act."

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 (2) DEFINITIONS.-As used in this section, the term:
 31 (a) "Correctional institution" means any facility under the
 32 authority of the department or the Department of Juvenile
 33 Justice, a county or municipal detention facility, or a
 34 detention facility operated by a private entity.
 35 (b) "Corrections official" means the official who is
 36 responsible for oversight of a correctional institution, or his
 37 or her designee.
 38 (c) "Department" means the Department of Corrections.
 39 (d) "Extraordinary circumstance" means a substantial flight
 40 risk or some other extraordinary medical or security
 41 circumstance that dictates restraints be used to ensure the
 42 safety and security of the prisoner, the staff of the
 43 correctional institution or medical facility, other prisoners,
 44 or the public.
 45 (e) "Labor" means the period of time before a birth during
 46 which contractions are of sufficient frequency, intensity, and
 47 duration to bring about effacement and progressive dilation of
 48 the cervix.
 49 (f) "Postpartum recovery" means, as determined by her
 50 physician, the period immediately following delivery, including
 51 the recovery period when a woman is in the hospital or infirmary
 52 following birth, up to 24 hours after delivery unless the
 53 physician after consultation with the department or correctional
 54 institution recommends a longer period of time.
 55 (g) "Prisoner" means any person incarcerated or detained in
 56 any correctional institution who is accused of, convicted of,
 57 sentenced for, or adjudicated delinquent for a violation of
 58 criminal law or the terms and conditions of parole, probation,

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59 community control, pretrial release, or a diversionary program.
 60 For purposes of this section, the term includes any woman
 61 detained under the immigration laws of the United States at any
 62 correctional institution.

63 (h) "Restraints" means any physical restraint or mechanical
 64 device used to control the movement of a prisoner's body or
 65 limbs, including, but not limited to, flex cuffs, soft
 66 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
 67 irons, belly chains, a security or tether chain, or a convex
 68 shield.

69 (i) "Restrictive housing" means housing some prisoners
 70 separately from the general population of a correctional
 71 institution and imposing restrictions on their movement,
 72 behavior, and privileges. The term includes placing the prisoner
 73 in medical isolation or in the infirmary.

74 (3) RESTRAINT OF PRISONERS.—

75 (a) Restraints may not be used on a prisoner who is known
 76 to be pregnant during labor, delivery, and postpartum recovery,
 77 unless the corrections official makes an individualized
 78 determination that the prisoner presents an extraordinary
 79 circumstance, except that:

80 1. The physician may request that restraints not be used
 81 for documentable medical purposes. The correctional officer,
 82 correctional institution employee, or other officer accompanying
 83 the pregnant prisoner may consult with the medical staff;
 84 however, if the officer determines there is an extraordinary
 85 public safety risk, the officer is authorized to apply
 86 restraints as limited by subparagraph 2.

87 2. ~~Under no circumstances shall~~ Leg, ankle, or waist

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88 restraints may not be used on any pregnant prisoner who is in
 89 labor or delivery.

90 (b) If restraints are used on a pregnant prisoner pursuant
 91 to paragraph (a):

92 1. The type of restraint applied and the application of the
 93 restraint must be done in the least restrictive manner
 94 necessary; and

95 2. The corrections official shall make written findings
 96 within 10 days after the use of restraints as to the
 97 extraordinary circumstance that dictated the use of the
 98 restraints. These findings shall be kept on file by the
 99 department or correctional institution for at least 5 years.

100 (c) During the third trimester of pregnancy or when
 101 requested by the physician treating a pregnant prisoner, unless
 102 there are significant documentable security reasons noted by the
 103 department or correctional institution to the contrary that
 104 would threaten the safety of the prisoner, the unborn child, or
 105 the public in general:

106 1. Leg, ankle, and waist restraints may not be used; and

107 2. If wrist restraints are used, they must be applied in
 108 the front so the pregnant prisoner is able to protect herself in
 109 the event of a forward fall.

110 (d) In addition to the specific requirements of paragraphs
 111 (a)-(c), any restraint of a prisoner who is known to be pregnant
 112 must be done in the least restrictive manner necessary in order
 113 to mitigate the possibility of adverse clinical consequences.

114 (4) ENFORCEMENT.—

115 (a) Notwithstanding any relief or claims afforded by
 116 federal or state law, any prisoner who is restrained in

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117 violation of this section may file a grievance with the
 118 correctional institution, and be granted a 45-day extension if
 119 requested in writing pursuant to rules promulgated by the
 120 correctional institution.

121 (b) This section does not prevent a woman harmed through
 122 the use of restraints under this section from filing a complaint
 123 under any other relevant provision of federal or state law.

124 (5) RESTRICTIVE HOUSING.—

125 (a) Except as provided in paragraph (b), a pregnant
 126 prisoner may not be involuntarily placed in restrictive housing.

127 (b) A pregnant prisoner may be involuntarily placed in
 128 restrictive housing only if the corrections official of the
 129 correctional institution, in consultation with the individual
 130 overseeing prenatal care and medical treatment at the
 131 correctional institution, determines that an extraordinary
 132 circumstance exists such that restrictive housing is necessary
 133 and that there are no less restrictive means available.

134 1. The corrections official shall, before placing a
 135 prisoner in restrictive housing, write a report that states:

136 a. The extraordinary circumstance that is present; and
 137 b. The reason less restrictive means are not available.

138 2. The corrections official shall review the report at
 139 least every 24 hours to confirm that the extraordinary
 140 circumstances cited in the report still exist. A copy of the
 141 report and each review must be provided to the prisoner.

142 (c) A pregnant prisoner who is placed in restrictive
 143 housing under this section shall be:

144 1. Examined at least every 8 hours by the person overseeing
 145 prenatal care and medical treatment in the facility;

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146 2. Housed in the least restrictive setting consistent with
 147 the health and safety of the individual; and

148 3. Given an intensive treatment plan developed and approved
 149 by the person overseeing prenatal care and medical treatment at
 150 the facility.

151 (d) If a pregnant prisoner needs infirmary care, a primary
 152 care nurse practitioner or obstetrician must provide an order
 153 for the prisoner to be admitted to the infirmary. If the
 154 prisoner has passed her due date, she must be admitted to the
 155 infirmary until labor begins or until the obstetrician makes
 156 other housing arrangements. A pregnant prisoner who has been
 157 placed in the infirmary shall be provided:

158 1. The same access to outdoor recreation, visitation, mail,
 159 and telephone calls as other prisoners; and

160 2. The ability to continue to participate in other
 161 privileges and classes granted to the general population.

162 (6) ~~(5)~~ NOTICE TO PRISONERS.—

163 (a) By September 1, 2012, the department and the Department
 164 of Juvenile Justice shall adopt rules pursuant to ss. 120.536(1)
 165 and 120.54 to administer this section.

166 (b) Each correctional institution shall inform female
 167 prisoners of the rules developed pursuant to paragraph (a) upon
 168 admission to the correctional institution, including the
 169 policies and practices in the prisoner handbook, and post the
 170 policies and practices in locations in the correctional
 171 institution where such notices are commonly posted and will be
 172 seen by female prisoners, including common housing areas and
 173 medical care facilities.

174 Section 2. This act shall take effect July 1, 2020.

Page 6 of 6

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20

Meeting Date

852

~~1256~~

Bill Number (if applicable)

Topic Greg POUND

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr,
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

852

Bill Number (if applicable)

Topic Incarcerated Pregnant Women

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Public Policy

Address 126 N. Mills Ave

Phone 4073764801

Street

Orlando FL 32801

City

State

Zip

Email ida.eskaman@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing New Florida Majority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/14/2022

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

852

Meeting Date

Bill Number (if applicable)

Topic Incarcerated Pregnant Women

Amendment Barcode (if applicable)

Name Charo Valero

Job Title Public Policy Director

Address Street

Phone

City

State

Zip

Email

Speaking: [] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Latina Advocacy Network

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

SBF52

Bill Number (if applicable)

Topic Restrictive Housing for incarcerated present work

Amendment Barcode (if applicable)

Name Laura Hernandez

Job Title Legislative Manager

Address Street

Phone 786-547-0087

Email

City

State

Zip

Speaking: [] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Alliance of Planned Parenthood activists

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

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1-14-20

852

Meeting Date

Bill Number (if applicable)

Topic Restricted Housing Incorporated

Amendment Barcode (if applicable)

Name Barbara Deane women

Job Title MS

Address 625 E. Brevard St

Phone 257-4280

Street Tallahassee FL

Email barbaradeane1@

City Tallahassee State FL Zip 32308

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20

Meeting Date

852

Bill Number (if applicable)

Topic Incarcerated Pregnant Women

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler Rd

Phone 786-363-4436

Street

Miami

FL

Email kgross@aclufl.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

852

Bill Number (if applicable)

Topic Housing Conditions for Pregnant Women

Amendment Barcode (if applicable)

Name Rex Dimmig

Job Title Public Defender, 10th Judicial Circuit

Address Polk County Courthouse, 255 North Broadway, 3d Floor

Phone 863-534-4200

Street

Bartow

City

Florida

State

33830

Zip

Email rdimmig@pd10.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

SB 852

Bill Number (if applicable)

Topic Restricted Housing for Incarcerated ^{Pregnant} Women Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee FL 32301

City

State

Zip

Email fcfep@yahoo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal + Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



The Florida Senate

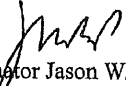
Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice
Subject: Committee Agenda Request
Date: November 25, 2019

I respectfully request that **SB 852**, relating to Restrictive Housing for Incarcerated Pregnant Women, be placed on the:

committee agenda at your earliest possible convenience.

next committee agenda.


Senator Jason W.B. Pizzo
Florida Senate, District 38

File signed original with committee office

S-020 (03/2004)



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 852
BILL TITLE:	Restrictive Housing for Incarcerated Pregnant Women
BILL SPONSOR:	Senator Pizzo
EFFECTIVE DATE:	July 1, 2020

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 10, 2020
LEAD AGENCY ANALYST:	Rusty McLaughlin
ADDITIONAL ANALYST(S):	Amber Vargas, Shana Lasseter, Jeff Bryan, Laura Carter, Sibyle Walker
LEGAL ANALYST:	Paul Vazquez
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Amends s. 944.241, F.S., by defining the term “restrictive housing” and prohibiting the involuntary placement of pregnant prisoners in this type of housing unless extraordinary circumstances exist necessitating the placement. In that event, corrections officials must write a specified report as to those circumstances and the need for the placement. Providing requirements for the report; requiring corrections officials to review such reports at specified intervals; requiring a copy of such reports and reviews to be provided to pregnant prisoners in restrictive housing; providing requirements for the treatment of pregnant prisoners placed in restrictive housing; requiring pregnant prisoners to be admitted to the infirmary under certain circumstances; providing certain rights for pregnant prisoners admitted to the infirmary.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Department of Corrections (FDC or Department) has five female correctional institutions statewide: (1) Gadsden Correctional Facility in Quincy; (2) Lowell Correctional Institution in Ocala; (3) Florida Women’s Reception Center in Ocala; (4) Hernando Correctional Institution in Brooksville; and, (5) Homestead Correctional Institution in Florida City. The Department assigns female inmates to institutions based on current classification procedures which work to stabilize the total inmate population, while facilitating the individual risk and needs of inmates to the extent possible considering security, medical and mental health needs, programmatic needs, geographic realities, and prohibitive monetary factors.

All pregnant inmates are housed at Lowell Correctional Institution in Ocala, for the duration of their pregnancy. All inmates within six weeks post-delivery are also housed at Lowell C.I. Lowell C.I. is the sole institution in the state designed and staffed to care for expectant and early postpartum inmates. Inmates are transferred to a contract hospital for the actual delivery, returning to the institution when discharged by the attending obstetrician. Postpartum care will be provided at the institution according to the discharge orders of the attending obstetrician. The six-week checkup will be provided by the obstetrician.

Florida law requires the Department to provide each pregnant inmate with prenatal care and medical treatment during her pregnancy. The inmates are transferred to outside (contracted) hospitals for labor and delivery.

Upon confirmation of pregnancy, the inmate’s medical grade is changed and the pregnant inmate is referred to a licensed physician for obstetrical care to provide prenatal care and follow them throughout their pregnancy. High risk patients are identified by obstetricians and handled accordingly. Inmates receive prenatal counseling, vitamins and exams. They also are prescribed a prenatal diet that includes three fortified breakfast beverages per day and is adjusted for the caloric value and nutritional recommendations for pregnancy. Any time a woman is pregnant and sent to prison she must decide where to place her child well prior to birth. Over the last three fiscal years, the pregnant inmate population was as follows:

FY 2018/2019 – 101

FY 2017/2018 – 98

FY 2016/2017 – 109

A review of the 101 pregnant inmates incarcerated in FY 2018-2019 revealed the inmates were serving commitments for the following offense categories:

Offense Category	Description	Number of Inmates
1	Murder	0
2	Sex Crimes	1
3	Robbery	3
4	Violent Personal Crimes	20
5	Burglary	8
6	Thefts, forgery, fraud	23
7	Drugs	32
8	Weapons	1
9	All Others	13

Of the 101 pregnant inmates during FY 2018-2019, 62 inmates, or 62%, have a disciplinary report (DR) history. Of those 62 inmates, 23 have at least one DR in the serious or assaultive categories. Examples in these categories include battery on a correctional officer or inmate, fighting, possession of narcotics, and participation in a disturbance.

All inmates, including pregnant inmates, are subject to placement in certain housing statuses, including restrictive housing, as indicated below. All confinement placements are justified and reviewed by more than one staff entity, and all attempts are made for less restrictive options before such placement. Additionally, all staff are trained to closely observe inmate behavior for signs indicating that medical and/or mental health care is needed. Moreover, all inmates are repeatedly informed that they may request such aid at any time.

The Department has specific procedures in place to address mental health emergencies, and has various facilities that are equipped with the necessary resources to address mental health crises, such as inmate-declared psychological emergencies. Procedure 404.001, Suicide and Self-Injury Prevention, and Health Services Bulletin (HSB) 15.05.18, Outpatient Mental Health Services, describe the requirements of mental health and nursing when dealing with psychological emergencies.

Some, but not all, of the relevant language contained within these policies is as follows:

Procedure 404.001 Section 1(b): "Inmate-declared psychological emergencies and emergent staff referrals will be responded to as quickly as possible but within one (1) hour by health services staff. Documentation of emergency contacts must be written and filed on the day of encounter."

HSB 15.05.18 Section V(A): "Inmate-declared emergencies and emergent staff referrals will be responded to as promptly as feasible, but must be responded to by health services staff within one (1) hour of notification. At institutions where twenty-four (24) hour health care coverage is not available; security staff will coordinate with available health care staff at the nearest institution to ensure response to emergent referrals in accordance with Procedure 404.001."

Administrative Confinement

Rule 33-602.220, F.A.C., administrative confinement is "the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded." Otherwise the treatment of inmates in administrative confinement is as near to that of the general population as assignment to administrative confinement permits.

An inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate's request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.
- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.

Prior to placing the inmate in administrative confinement, the inmate is given a pre-confinement health assessment, which includes a physical and mental health evaluation that is documented in the inmate's health care record.

The Institutional Classification Team (ICT) reviews inmates in administrative confinement within 72 hours.

Inmates in administrative confinement may be housed with other inmates. However, prior to placing inmates in the same cell, the inmates are interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other. The number of inmates housed in an administrative confinement cell does not exceed the number of bunks in the cell. The only exception to this policy is during an emergency situation as declared by the warden or duty warden.

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.

- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer and a member of the ICT.

An inmate is assessed regularly to determine the appropriateness of placement. Specifically:

Mental Health: Any inmate assigned to administrative confinement for more than 30 days is given a psychological screening assessment by a mental health professional to determine his or her mental condition. The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

ICT: If an inmate is confined for more than 30 days, the ICT interviews the inmate and prepares a formal assessment and evaluation report after each 30-day period in administrative confinement.

State Classification Office (SCO): The SCO reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate's administrative confinement status.

Inmates in administrative confinement retain certain privileges but some may be more restrictive than the general population. They are provided:

Exercise - Those inmates confined on a 24-hour basis excluding showers and clinic trips may exercise in their cells. However, if confinement extends beyond a 30-day period, an exercise schedule is implemented to ensure a minimum of three hours per week of exercise out of doors.

Showers - At a minimum each inmate in confinement showers three times per week and on days that they work.

Meals - All inmates receive normal institutional meals as are available to the general inmate population. However, if any item on the normal menu creates a security problem in the confinement unit, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

Clothing – Inmates are provided the same clothing and clothing exchange as the general inmate population unless there are facts to suggest that on an individual basis exceptions are necessary for the welfare of the inmate or the security of the institution.

Medical – Inmates are allowed out of their cells to receive regularly scheduled mental health services as specified unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.

Correspondence – Inmates have the same opportunities for correspondence that are available to the general inmate population.

Telephone privileges are allowed for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.

Visits are permitted only when specifically authorized by the warden or his/her designee.

Legal visits are allowed and are not restricted except when there is evidence that the visit is a threat to security and order. The warden or his or her designee must approve all legal visits in advance.

Legal Access - Legal materials are accessible to inmates in administrative confinement as to inmates in general population as long as security concerns permit. An inmate in confinement may be required to conduct legal business

by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

Disciplinary Confinement

As defined in Rule 33-602.222, F.A.C., "Disciplinary Confinement refers to a form of punishment in which inmates found guilty of committing violations of the department rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct." All inmates, regardless of age, are subject to the same penalties stated in Rule 33-601.314, F.A.C., Rules of Prohibited Conduct and Penalties for Infractions.

Inmates are given pre-confinement medical evaluations by medical staff prior to being placed in disciplinary confinement. Any inmate currently in another confinement status who received a pre-confinement medical assessment is not to be required to have another medical assessment prior to movement to disciplinary confinement.

Inmates in disciplinary confinement may be housed with another inmate. However, prior to placing inmates in the same cell, the inmates are interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other. Inmates are not housed in disciplinary confinement cells in greater number than there are beds in the cells. The only exception to this policy is during an emergency situation as declared by the warden or duty warden.

Staff are required to conduct regular visits to disciplinary confinement. These visits are to be conducted at the same frequency as inmates in administrative confinement, with additional visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.
- As frequently as necessary by the SCO to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.

Inmates in disciplinary confinement status retain certain privileges, but some may be more restrictive than the general population. Privileges for inmates in disciplinary confinement are comparable to those listed above for administrative confinement, and are specified in Rule 33-602.222, F.A.C.

Close Management

As defined in Rule 33-601.800, F.A.C., close management is the confinement of an inmate apart from the general population, for reasons of security, or the order and effective management of the institution, where the inmate, through his or her behavior, has demonstrated an inability to live in the general population without abusing the rights and privileges of others. There are three levels of close management. Close management I (CMI) is the most restrictive single cell housing level of all the close management status designations. CMII is restrictive cell housing, which may or may not be restricted to single cell housing. CMIII is the least restrictive cell housing unit in close management.

When an inmate in general population has committed acts that threaten the safety of others, threaten the security of the institution, or demonstrate an inability to live in the general population without abusing the rights and privileges of others, the inmate shall be placed in administrative confinement pending close management review. When an inmate in any other confinement status has committed acts that threaten the safety of others, threaten the security of the institution, or demonstrated an inability to live in a segregated population without abusing the rights and privileges of others the inmate shall be housed in his or her current status pending close management review.

Specific placement processes, review and reporting requirements as well as conditions and privileges in CM units are outlined in Rule 33-601.800, F.A.C.

Medical Isolation

Under current Department procedures, when an inmate needs to be isolated from other inmates for medical reasons, he or she is housed in a medical isolation cell within the infirmary area of the institution. As indicated in the department's Health Services Bulletin 15.03.26, the infirmary will be staffed twenty-four (24) hours per day by health care personnel; all infirmary inmates must be within sight or sound of staff; and, staff shall make rounds at least every two (2) hours for all patients in the infirmary.

2. EFFECT OF THE BILL:

Amends s. 944.241, F.S., by adding the term “restrictive housing” meaning housing some prisoners separately from the general population of a correctional institution and imposing restrictions on their movement, behavior, and privileges. The term includes placing the prisoner in medical isolation or in the infirmary.

All inmates, including pregnant inmates, are subject to placement in certain housing statuses, including those of a restrictive nature, as described above. All confinement placements are justified and reviewed by more than one staff entity for appropriateness, and all attempts are made for less restrictive options before any such placement.

The proposed language states that a pregnant prisoner may not be involuntarily placed in restrictive housing unless the corrections official of the correctional facility (warden or his/her designee), along with the individual overseeing the inmate’s prenatal care and medical treatment, determine that an extraordinary circumstance exists to warrant placement in restrictive housing and that there are no less restrictive means available. Additionally, the legislation requires that:

(1) a report describing the extraordinary circumstance(s) and the reason less restrictive means are unavailable must be written prior to placement;

““Extraordinary circumstance” is defined in the bill as a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public. Based on this definition of “extraordinary circumstance” within the statute, unlike for restraints, the usage of such requirement doesn’t seem applicable to the day to day decisions for a placement into restrictive housing. The existing definition is specifically constructed to dictate for the usage of restraints. The decision / necessity to use restraints is not the circumstantial equivalent of the decision / necessity for placement into a restrictive housing status. Presently, prior to placing the inmate in administrative confinement, an inmate is given a pre-confinement health assessment to include a physical and mental health evaluation that is documented in the health care record.

The proposed legislation declares no prohibition on placement in restrictive housing for protection needs, investigations or discipline, it is presumed “extraordinary circumstances” would include these reasons for placement, which aligns with current department administrative rules.

If the intent is to exclude these reasons, then the bill conflicts with existing administrative rules and essentially creates a new classification and confinement system for pregnant inmates who would be exempted in many ways from the Department’s current confinement and special housing rules, especially disciplinary confinement. The Department has very few tools at its disposal and abolishing processes for enforcing consequences of negative behavior is risky. More specifically, the restriction of certain management tools serves to provide no incentive for inmates to follow rules and regulations, effectively undermining the Department’s ability to ensure the safety of staff and inmates, the security of the facility.

Under current Department practices, all confinement placements are justified in writing and reviewed by more than one staff entity, and all attempts are made for less restrictive options before such placement.

(2) the report is reviewed by “the corrections official” (warden) at least every 24 hours to confirm the extraordinary circumstance(s) still exists and provide a copy of the report and each review to the inmate;

Risk factors differ among pregnant inmates based on things such as the duration of the pregnancy and whether or not the inmate was a high risk from the onset of pregnancy based upon a pre-existing condition.

This requirement poses a substantial workload increase for the warden or his/her designee. Some pregnant inmates have higher risk factors than others; therefore, every pregnant inmate may not require such frequent reviews.

The Department utilizes administrative confinement, disciplinary confinement, and close management to separate inmates from the general population. A myriad of staff is required to visit the inmate in these statuses daily and weekly. Staff is always present and is specifically required to visit the inmate, including the warden, assistant wardens, shift supervisor on all shifts, the housing supervisor, the chaplain, mental health professional, and a member of the Institutional Classification Team. Additionally, a correctional officer makes routine checks of each inmate. Each of these visits are specifically documented.

(3) any pregnant inmate placed in restrictive housing shall be examined at least every 8 hours by the individual overseeing the inmate’s prenatal care and medical treatment;

It does not limit the stage of pregnancy or provide any requirements or parameters for the examination. Because some pregnant inmates have higher risk factors than others, every pregnant inmate may not require such frequent medical examinations. Compliance with this requirement would necessitate additional medical and security staff, including after-hours staff. It is indeterminate as to the required number of staff due to the unknown factors, and a comprehensive workload study would likely be required to determine the full staff impact; however, the following example may shed some light on the increased workload:

In FY 18/19, there were 101 pregnant inmates in the Department's custody. Of those, 23 received a serious or assaultive DR warranting disciplinary confinement. Using the average confinement time of 30 days and factoring in medical examinations for these inmates every 8 hours yields a total of 90 exams per inmate and a total of 2,070 total medical exams in a 30-day period for 23 inmates.

(4) the pregnant inmate is housed in the least restrictive setting consistent with the health and safety of the inmate;

Under current Department practices all attempts are made for less restrictive options before placing any inmate in a restricted housing status. No inmate is ever placed in any type of restricted housing status unless warranted.

(5) the pregnant inmate is given an intensive treatment plan developed and approved by the individual overseeing the inmate's prenatal care and medical treatment;

It is unclear of the intended purpose, required content, or what the "treatment plan" is to address. A pregnant inmate, regardless of their housing location, will always be followed by an obstetrician throughout their pregnancy through discharge after the 6-week postpartum follow-up.

In order to comply with this requirement, the Department would require clarification of the legislative intent.

(6) any pregnant prisoner in need of infirmary care must have an admit order to the infirmary from a primary care nurse practitioner or obstetrician;

Current Department procedures authorize Physicians, ARNPs, and Physician Assistants to admit patients to the infirmary.

(7) any inmate who has passed her due date must be admitted to the infirmary until labor begins or other housing arrangements are made;

This may not be necessary depending on the pregnant inmate's risk factors. Under current practice, inmates are housed in the infirmary when clinically indicated.

(8) any pregnant inmate placed in the infirmary shall be provided the same access to outdoor recreation, visitation, mail, phone calls, and to participate in other privileges and classes granted to the general population.

Under current Department policy and procedure, this already occurs when the inmate is physically able to participate.

The passage of this bill as written would represent a significant shift from the way the Department manages its special housing populations. Department compliance with this bill would require:

- (1) Substantial revisions and additions to Chapter 33, F.A.C., at a minimum requiring a new and separate matrix of disciplinary infractions and penalties;
- (2) Additional correctional and medical staff.
- (3) Program changes to the department's Offender Based Information System (OBIS), as well as sufficient fiscal appropriation, to ensure that pregnant inmates are processed and handled differently than the current system provides for.

The effective date of the bill is July 1, 2020.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	
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Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local referendum or local governing body public vote	

prior to implementation of the tax or fee increase?	
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2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	Indeterminate.
Expenditures:	<p>If this bill is passed, the overall fiscal impact to inmate and community supervision population is indeterminate. However, it is anticipated that the passage of this bill would require additional correctional and medical staff to ensure compliance.</p> <p>In addition, there is an estimated technology cost of \$17,400 due to OBIS changes to include changes to location, restrictions, DR's and penalties as well as changes to the current intake and processing for pregnant inmates.</p>
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	There will likely be a significant technology impact due to OBIS changes to include changes to location, restrictions, DR's and penalties as well as changes to the current intake and processing for pregnant inmates.
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FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y N

If yes, describe the anticipated impact including any fiscal impact.	
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ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<p>Direct legal impact is as follows:</p> <p>Lines 162-165: Section 944.241(6), F.S, as currently written requires the Department to adopt rules to "administer this section" by September 1, 2012. This language apparently relates to the original enactment of s. 944.241, F.S., regarding the use of restraints on incarcerated pregnant women. The implementation of SB 852 will likely require the Department to promulgate new rules related to population management. Therefore, new rulemaking authority will need to be given to the Department in order to implement the proposed amendments to the statute.</p> <p>Further comments:</p> <p>Lines 39-44: "Extraordinary circumstance" does not appear to be sufficiently defined in the bill as drafted. The definition apparently relates to the original enactment of s. 944.241, F.S., regarding the use of restraints on incarcerated pregnant women. In order to have any meaning in the context of lines 131-133, the definition needs to be amended.</p> <p>Lines 69-73: The definition of "restrictive housing" should be limited to use in s. 944.241, F.S., to avoid any unintended confusion regarding how that phrase is used by the Department in other areas of operation.</p>
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	<p>Line 135: The Department is required to write a report, but the bill as drafted does not address how the report is to be maintained.</p>
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2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Juvenile Justice

BILL INFORMATION

BILL NUMBER:	<u>SB 624</u>
BILL TITLE:	<u>Youth in Solitary Confinement</u>
BILL SPONSOR:	<u>Senator Montford</u>
EFFECTIVE DATE:	<u>July 1, 2019</u>

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Criminal & Civil Justice Appropriations Subcommittee
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	HB 755
SPONSOR:	Representative Alexander

PREVIOUS LEGISLATION

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?

No.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	1/31/19
LEAD AGENCY ANALYST:	Rachel Moscoso, Legislative Affairs Director, (850) 717-2716
ADDITIONAL ANALYST(S):	Sam Kerce, Deputy Legislative Affairs Director
LEGAL ANALYST:	John Mila, Asst. General Counsel
FISCAL ANALYST:	Marti Harkness, Budget Chief

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Prohibits the Department of Corrections and the Department of Juvenile Justice from placing youth in solitary confinement except under certain circumstances. Specifies a timeframe and requirements around the use of emergency confinement and medical confinement including the frequency in which a mental health clinician and medical professional must conduct evaluations on youth in emergency and medical confinement.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Department of Juvenile Justice does not use solitary confinement in its secure detention centers or residential commitment programs. Solitary confinement is the placement of an incarcerated person in a place where they are deprived of, or have extremely limited, contact with other people. The Department does use short-term supervised **confinement, precautionary observation, secure and controlled observation** for youth presenting an immediate danger to themselves or others in its Detention and Residential facilities. **Medical Confinement** is used for youth who present with a communicable disease that may infect others. The use of short-term supervised confinement or observation of a youth is required to be documented. Residential Administrative Rule chapter 63E-7, F.A.C., Detention Administrative Rule chapter 63G-2, F.A.C., and Mental Health Administrative Rule chapter 63N-1, F.A.C., dictate the intervals and specific requirements of each form of documentation.

- 1) **Youth presenting immediate danger to others** –when a youth is presenting a danger to staff, a danger to other youth, or causing major property damage that is compromising the safety and security of the facility.
 - a. **Residential Facilities**– if a youth is presenting an immediate danger to others or to the safety and security of the facility while in their residential program, they will be sent to a room which is deemed safe, secure, and in compliance with Residential Administrative Rule chapter 63E-7, F.A.C (minimum 35 square feet, bed, lights, windows). This is known as **Controlled Observation**. Controlled observation has a maximum time limit of two hours, that can be extended by the program director in two-hour increments for no longer than 24 hours. Youth who are in controlled observation receive the standard 10-minute sight and sound check along with documentation of their behavior 15-minute intervals.
 - b. **Detention Centers** - if a youth presents an immediate danger to others or the safety and security of the facility while in a detention center, they may be sent to **Confinement**. Once a youth is confined, the juvenile detention officer must document this in a confinement report no later than one hour after confinement was issued. A youth in confinement will have a minimum of standard supervision which includes 10-minute visual checks. The juvenile detention supervisor must review the report within two hours of the youth's confinement and must evaluate and document the youth status every three hours. Staff are expected to work with the youth to continually counsel them and remove them from confinement as soon as they can safely rejoin the population. Confinement may not be used more than 8 hours without the Detention Center Superintendent granting an extension and no more than 24 hours without the Regional Director signing off and notifying the Assistant Secretary of Detention. According to Detention Services' Facility Policy and Procedure, confinement may not exceed 72 hours. The Department is continually striving to minimize the length of time youth are held in confinement.

- 2) **Youth presenting suicidal or harmful behaviors to themselves** –when a youth is presenting a danger to themselves either through action or through verbal threats.
- a. **Residential and Detention** – A youth shall be placed on **Precautionary Observation** if the youth is identified by intake screening or staff observations, as having suicide risk factors (recent suicide attempt, suicide ideation, threat, drawings, preoccupation with death, major loss such of parent, sibling, or friend) or is determined to be a potential suicide risk and the youth is in need of observation and monitoring beyond which is normally provided. Placement on Precautionary Observation, upgrades their supervision to a minimum of Constant Supervision and a “Suicide Risk Alert” is required to be completed in the Department’s Juvenile Justice Information System (JJIS). Constant Supervision is the continuous and uninterrupted observation of a youth by a staff member assigned to monitor the youth who has a clear and unobstructed view of the youth, and unobstructed sound monitoring of the youth at all times. The assigned staff member will document behaviors and actions of the youth every 30 minutes in the Suicide Precautions Observation Log. Youth on Precautionary Observation are permitted to participate in selected activities with other youth, but these activities are limited to the safe housing areas in the facility or program. Safe housing areas are areas that are designed to eliminate or prohibit devices or materials which might aid in self-harm. The safe housing areas shall not limit the youth’s activity to an individual cell, whether locked or unlocked, or a confinement room of any kind, nor shall it restrict a youth to his/her sleeping room as a suicide precaution.

Anytime a suicide alert is entered in JJIS for a youth, an Assessment of Suicide Risk is completed by a Mental Health Clinical Staff person/Licensed Mental Health Professional within 24 hours or immediately if the youth is in crisis. If a youth makes a suicide attempt or attempts serious self-inflicted injury, the youth is assessed immediately or is transported for emergency mental health services (Baker Act). Once a youth has an Assessment of Suicide Risk completed the youth will either continue on Precautionary Observation or can be upgraded to **Secure Observation**. The designated Mental Health Clinician authority and/or other Licensed Mental Health Professional are involved in the decision-making process as to whether Secure Observation is appropriate for a specific youth. The current maximum time allowed for Secure Observation is 8 hours, unless there are extenuating circumstances. In that event, the designated Mental Health Clinician authority/Licensed Mental Health Professional is consulted and must agree to a limited time extension. Secure Observation is not meant as a long-term placement, so a Licensed Mental Health Professional must provide written concurrence for a youth to remain in Secure Observation beyond 24 hours. The Department, in practice, strives to never have youth reach that 24-hour mark and instead will consider transfer to a psychiatric hospital for a youth who is still posing a threat to themselves. When a youth at risk for suicide is placed on Secure Observation they remain on one-to-one supervision at all times. While the Department does not have 24/7 onsite licensed medical or mental health professionals, each facility has on call licensed medical and mental health staff members to provide after hours consultation via telephone.

A youth is kept on Suicide Precautions (Precautionary Observation or Secure Observation) until a licensed mental health professional and facility administration deems it appropriate that they go back onto normal supervision.

- 3) **Medical Confinement**- used for youth who present with a communicable disease that may infect others or to allow the youth to rest and recover from an illness.
 - a. **Residential and Detention** – A licensed physician must make the determination to place a youth in Medical Confinement. While the Department does not have 24-hour, 7 day a week medical staff, there is always a physician available by phone to be contacted in order for a youth to be put into Medical Confinement. That physician will make the decision on when a youth is able to leave medical confinement. The use of Medical Confinement is normally voluntary, but can be ordered, as the medical professional works with the youth to explain the circumstances of their Medical Confinement. Every effort will be made to continue the youth’s normal routine while confined for medical purposes. The youth will be monitored through normal daily medical rounds with nurses or the physician.

2. EFFECT OF THE BILL:

Section 1 and 2: Not applicable to the Department of Juvenile Justice

Section 3 and 4: Section 3 creates s. 985.28, F.S., to address confinement in detention centers. Section 4 creates s. 985.4415, F.S., to address confinement in residential programs. The bill defines the following:

Child – a youth 19 years of age or younger that is in DJJ custody

Mental Health Clinician – a psychiatrist, psychologist, social worker, or nurse practitioner

Solitary confinement – the involuntary placement of a child in an isolated room to separate that child from other children in the facility for any period of time

Emergency confinement – type of solitary confinement that involves placement of a child in an isolated room to remove them from a situation in which they present an immediate and serious danger to the security or safety of themselves or others

Medical confinement – type of solitary confinement that involves placing the youth in an isolated room to allow the child to recover from illness or to prevent the spread of a communicable illness.

This bill changes the definition of a child to a youth under 19 years old. Youth can be in the Department’s custody up until the age of 21. The bill would create different standards for youth in the same facility based solely on age.

The bill prohibits the use of solitary confinement unless it is used for emergency or medical confinement and meets certain criteria, including reporting criteria.

Under the bill, **emergency confinement** could be used if the all of the following criteria are met: A nonphysical intervention with the child would not be effective, there is imminent risk of the child physically harming themselves, staff, or others or if the child is engaged in major property damage that would comprise the safety and security of the facility, and that all less-restrictive means have been exhausted. If all the above criteria are met, then the staff may place the youth in emergency confinement and must document the justification for the placement and describe the less-restrictive options that the facility used prior to placement. Within one hour of a child being placed in emergency confinement a mental health clinician must evaluate the child to ensure that the confinement is not detrimental to the child’s mental or physical health. Following the initial evaluation, every two hours the mental health clinician must reevaluate, face-to-face, the youth to determine whether emergency confinement is still needed. Emergency confinement shall not last longer than 24 hours unless a onetime extension of 24 hours is given by the mental health clinician. If after 48 hours the youth is still determined to need emergency confinement, the facility staff must prepare to transfer the youth to a facility that is able to meet the child’s needs. The bill also states that a child in emergency confinement must be provided access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to children in the facility.

The term emergency confinement encompasses multiple aspects of Departmental Rule such as controlled observation, precautionary and secure observation and short-term supervised detention confinement. The bill requires a mental health clinician assess youth in emergency confinement every two hours. Currently, a

youth who displays mental distress will receive constant supervision and mental health status checks by licensed mental health providers in intervals that ensure the wellbeing of the youth. In order to meet the requirements of the bill and the Department of Health’s licensing requirements for counselors, the Department will need to hire additional licensed mental health professionals with an active license. The fiscal impact to the Department being required to have 24-hour, 7 day a week licensed mental health professional can be found under the fiscal section of this analysis.

The bill further provides that all youth in confinement should receive the same clothing as the youth not in confinement. However, youth in the Department’s care on suicide precautions are often required to wear different clothing to ensure they cannot endanger themselves through strangulation or other methods of self-harm.

Medical confinement can be used if isolation from staff and other children in the facility is required to allow the child to rest and recover or to prevent the spread of a communicable disease. The bill states that a medical professional must initiate the medical confinement and must conduct and document a face-to-face evaluation of the child every 12 hours to determine if confinement is still needed. This 12-hour face-to-face check is not currently feasible for the Department. While youth do not go for extensive time periods without medical evaluations, there is not 24-hour, 7 days a week medical staff on site at each facility. The Department instead talks over the phone with a contracted physician to discuss the youth’s situation. A youth will be sent to a hospital if disease is found serious enough. The fiscal impact to the Department being required to have a full time medical professional at every facility can be found under the fiscal section of this analysis.

Section 3 provides for a process where the Department and the board of county commissioners of each county that administers a detention facility shall review their policies and procedures relating to disciplinary treatment to determine whether policy complies with this new section of law. The Department and county board shall certify to the Governor, President of the Senate, and Speaker of the House that they are in compliance by January 1, 2020. Section 4 requires the Department to certify compliance of their residential facilities with the new section of law and report to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2020.

Section 5: Not applicable to the Department of Juvenile Justice.

Section 6: Amends section 985.601, F.S., to allow the Department to adopt rules on the strict prohibition on the use of solitary confinement on children under the age of 19 years and to ensure compliance with the rest of the bill language.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	DJJ Residential and Detention rules will need to be amended.
Is the change consistent with the agency’s core mission?	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	<p>Detention rules would require amendment to accommodate the new nomenclature. The definitions of behavioral confinement and medical confinement in 63G-2.014(7) and (50) will require revision. Rule 63G-2.022(4) (“Confinement”) will need substantial revision to accommodate the processes that must govern review and reporting timelines.</p> <p>The Residential rule (63E-7) is currently undergoing amendment. The definition of controlled observation in draft 63E-7.100(22), and the detailed processes in rule 63E-7.107(14) will require extensive amendment.</p>

	<p>The Mental Health rule (63N-1) will need to be amended to accommodate the many changes such as the new definition of Mental Health Clinician and the intervals in which a youth on observation must be evaluated.</p> <p>The Detention and Residential amendments will likely require legislative ratification as the cost of having mental health professionals continuously on-site will exceed the regulatory cost thresholds in section 120.541(3), F.S., (\$1M over the first 5 years).</p>
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4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	<p>The Department, along with the board of county commissioners of each county that administers a detention facility must certify compliance with the new section of law and report to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2020.</p> <p>The Department must certify compliance of their residential facilities with the new section of law and report to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2020.</p>
Date Due:	January 1, 2020.
Bill Section Number(s):	s. 985.28(5)(b) and s. 985.4415(5)(b)

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y N

Revenues:	Click or tap here to enter text.
Expenditures:	The total cost for Detention would be \$9,247,056 for the state (please see explanation under fiscal impact to state government). In accordance with Detention Cost Share, all non-fiscally constrained counties will pay for half of their respective detention cost. Half of this cost for local counties would total up to \$4,623,528. The entire half would not be covered due to the fiscally constrained counties. Detention Cost Share is a reimbursement system, meaning the entire \$9,247,052 would need to be allocated to the Department in year one and \$4,623,526 allocated to the Department in the following years for Detention staff increases.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y N

Revenues:	Click or tap here to enter text.
Expenditures:	<p><u>Mental Health Clinicians</u></p> <p>Within one hour of a child being placed in emergency confinement a mental health clinician must evaluate the child to ensure that the confinement is not detrimental to the child’s mental or physical health. Following the initial evaluation, every two hours the mental health clinician must reevaluate, face-to-face, the youth to determine whether emergency confinement is still needed.</p> <p>As written, the bill precludes the use of Licensed Mental Health Counselors and Licensed Marriage and Family Therapist for the definition of Mental Health Clinician, which are currently the majority of the Department’s mental health staff. Assuming this is an oversight in the bill and that language would be amended to allow for these positions, the Department provides the following analysis based on full time Licensed Mental Health Counselors.</p> <p><u>Residential cost</u> was estimated by looking at the most recent 5 procured contracts and averaging the salary for a licensed mental health clinician. To ensure there was a mental health clinician on site at all time would require an additional 1.67 FTEs per our 54 facilities,</p>

totaling 90 FTE. The estimated annual recurring cost for residential is \$7,855,385.

Detention cost was estimated for 24 hours coverage by a mental health clinician. Since we currently contract for 40 hours per week with mental health clinicians, the Department would have to provide coverage for an additional 128 hours a week (24/7 a week requires 168 hours of coverage needed). To determine an estimated cost for Detention Centers, this formula was used: 128 hours X 52 weeks X 21 detention centers X \$41 hourly cost of a licensed mental health clinician. The estimated annual recurring cost for detention is \$5,730,816.

Mental health clinicians are not qualified to evaluate the *physical* health of a youth in emergency confinement (lines 303-306). A mental health clinician who attempts to evaluate the physical health of a youth risks losing their license. To evaluate the physical health of a youth in emergency confinement within two hours of placement the Department would need 24-hour, 7 day a week medical staffing.

Medical Staff

Residential cost was estimated by looking at the most recent 5 procured contracts and averaging the salary for the lowest cost medical staff member, a registered nurse. To ensure there was a medical professional on site at all time would require an additional 1.67 FTEs per our 54 facilities, totaling 90 FTE. The estimated annual recurring cost for residential is \$6,263,622.

Detention cost was estimated for 24-hour coverage by a medical staff. Since we currently contract for 76 hours per week with medical professionals, the Department would have to provide coverage for an additional 92 hours a week (168 hours of coverage needed). To determine an estimated cost for Detention Centers, this formula was used: 92 hours X 52 weeks X 21 detention centers X \$35 hourly cost of a licensed nurse practitioner. The estimated annual recurring cost for detention is \$3,516,240.

Medical confinement, as written in the bill, requires a youth to be evaluated every 12 hours face-to-face by a medical professional. With the requirement of 24-hour, 7 day a week medical staff to ensure compliance with the evaluations described in emergency confinement, the Department would be able to use those same medical staff to meet the requirements addressed under the Medical Confinement section of the bill.

The total cost to the state for fulltime Mental Health Staff and Medical Staff would be \$18,742,535 on an annual recurring basis after year one when counties pay their portion in accordance with Detention Cost Share.

	<p>Due to the reimbursement system put in place by Detention Cost Share, year one funding for the state would total - \$23,366,063</p> <p>Note - The above calculations are based on current contracted rates. Going forward the rates may increase as the demand for mental health and medical professionals grow. These rates are also based on normal shift hour rates and can be expected at a higher rate for evening and night time hours.</p>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	No

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	The Department contracts with private providers for both medical and mental health staff. The cost to the state for additional mental health and medical staff would be a revenue for the private sector.
Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	Click or tap here to enter text.
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.
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ADDITIONAL COMMENTS

The definition of Mental Health Clinician within the bill precludes the use of Licensed Mental Health Counselors (LMHC) and Licensed Marriage and Family Therapists (LMFT). Although this appears to be an oversight, as it is currently written residential and detention centers would be required to replace about 90% of their licensed mental health clinical staff as the majority of the mental health clinicians working in residential and detention centers are LMHC's and LMFT's, not a "Social Worker" as the bill requires. Within the bill a social worker is never identified as an Licensed Clinical Social Worker, which leaves the Department vulnerable because bachelor's level, unlicensed social workers are not qualified to provide counseling services (Chapter 491, FS).

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

<p>Issues/concerns/comments:</p>	<p>Click or tap here to enter text.</p>
<p>Lines 266 & 377:</p>	<p>The Department can have custody of youth up to 21 years of age. Since the use of confinement will be facility-wide, this could lead to having different types of confinement practices for youth in the same facility.</p>
<p>Lines 265-66 & 358-69:</p>	<p>At least as concerns detention, the bill contains an inconsistency. If "child" is defined as a person under 19 "who is in the custody of the department," then county-operated detention facilities (currently Polk and Seminole) are not included, and there is no reason to coordinate with "<i>the board of county commissioners of each county that administers a detention facility</i>" about the implementation of the new confinement restrictions. County-operated juvenile detention facilities are governed, not by any Department rules, but rather by chapter 21 of the Florida Model Jail Standards. Whether and to what extent the Jail Standards are consistent with the bill is irrelevant, given that county-operated juvenile detention facilities are not covered by the bill, as they do not detain a "child" under the bill's definition.</p>
<p>Line 366:</p>	<p>Assuming the definition of "child" is amended to include county-operated detention facilities, the "report" to be submitted by the Department and the board should be independent "reports." The Department and the counties (currently Polk and Seminole) are governed by different rules, with the former governed by Florida Administrative Code chapters 63G-2 and 63E-7, while the latter is governed by the Florida Sheriff's Association Model Jail Standards. A joint "report" concerning one another's compliance would require the Department to interpret the Jail Standards, and the counties to interpret chapter 63G-2. Since these entities are not expert on one another's regulations, neither should be asked to certify the other's compliance in a joint report.</p>

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 Criminal Justice

BILL: CS/SB 872

INTRODUCER: Criminal Justice Committee and Senator Perry

SUBJECT: Public Records/Commissioners and Specified Personnel

DATE: January 15, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 872 amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families.

The bill creates a new public records exemption that applies to current or former commissioners of the Florida Commission on Offender Review (FCOR) or specified commission personnel.

The information exempted from public records requirements for the above-mentioned entity includes the:

- Home addresses, telephone numbers, dates of birth, and photographs of such personnel;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides that the exemption created under the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

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

Because the bill creates a new 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 does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding this exemption should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

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 the statutory provisions are 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., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.”

“public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ 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.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

**Public Records Exemptions for Specified Agency Personnel and Their Families
(s. 119.071(4)(d), F.S.)**

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;²⁷
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;²⁸
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;²⁹
- Current or former certified firefighters;³⁰
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;³¹
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;³²
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;³³
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;³⁴
- Current or former code enforcement officers;³⁵
- Current or former guardians ad litem;³⁶
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;³⁷

²⁷ Section 119.071(4)(d)2.a., F.S.

²⁸ Section 119.071(4)(d)2.b., F.S.

²⁹ Section 119.071(4)(d)2.c., F.S.

³⁰ Section 119.071(4)(d)2.d., F.S.

³¹ Section 119.071(4)(d)2.e., F.S.

³² Section 119.071(4)(d)2.f., F.S.

³³ Section 119.071(4)(d)2.g., F.S.

³⁴ Section 119.071(4)(d)2.h., F.S.

³⁵ Section 119.071(4)(d)2.i., F.S.

³⁶ Section 119.071(4)(d)2.j., F.S.

³⁷ Section 119.071(4)(d)2.k., F.S.

- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;³⁸
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;³⁹
- County tax collectors;⁴⁰
- Certain current or former personnel of the Department of Health;⁴¹
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;⁴²
- Current or former certified emergency medical technicians and paramedics;⁴³
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;⁴⁴
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁴⁵
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers;⁴⁶ and
- Active or former civilian personnel employed by a law enforcement agency.⁴⁷

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.⁴⁸ Further, all of these exemptions have retroactive application.⁴⁹

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses,⁵⁰ telephone numbers,⁵¹ and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of

³⁸ Section 119.071(4)(d)2.l., F.S.

³⁹ Section 119.071(4)(d)2.m., F.S.

⁴⁰ Section 119.071(4)(d)2.n., F.S.

⁴¹ Section 119.071(4)(d)2.o., F.S.

⁴² Section 119.071(4)(d)2.p., F.S.

⁴³ Section 119.071(4)(d)2.q., F.S.

⁴⁴ Section 119.071(4)(d)2.r., F.S.

⁴⁵ Section 119.071(4)(d)2.s., F.S.

⁴⁶ Section 119.071(4)(d)2.t., F.S.

⁴⁷ Section 119.071(4)(d)2.u., F.S.

⁴⁸ Section 119.071(4)(d)3., F.S.

⁴⁹ Section 119.071(4)(d)4., F.S.

⁵⁰ Section 119.071(4)(d)1.a., F.S., defines "home addresses" to mean "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."

⁵¹ Section 119.071(4)(d)1.b., F.S., defines "telephone numbers" to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices."

children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of family members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the State Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different Open Government Sunset Review sunset dates.

FCOR Commissioners and Personnel

The FCOR is involved in post-release decisions affecting inmates and ex-offenders. The FCOR functions as a quasi-judicial body that makes a variety of decisions involving parole, conditional release, and conditional medical release.⁵² The FCOR also acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency, in clemency matters.⁵³

The Commission must consist of six members that reside in Florida.⁵⁴ Commissioners are appointed by the Governor and Cabinet and confirmed by the Senate in accordance with s. 947.02, F.S. Commission appointees are appointed for terms of six years, unless otherwise stated, and may not be appointed for more than two consecutive six-year terms.⁵⁵ The FCOR reports that commissioners preside over approximately 36 hearings annually at various locations in Florida.⁵⁶ These meetings are public proceedings and the commissioners make a variety of determinations regarding parole and other releases.

The Commission reviews releasees' supervision status every two years, imposes conditions of conditional release or addiction recovery supervision, and makes final determinations related to revocation of post release supervision that may include recommitment to the Department of Corrections to complete service of the original term of imprisonment.⁵⁷

The FCOR employs investigators who investigate and compile necessary background information to be used in making final decisions related to any of the cases that are before the Commission. The FCOR commissioners and certain commission personnel, such as investigators, are routinely involved in decisions which affect the incarceration or supervision status of convicted felons.⁵⁸

As of January 8, 2020, there are 3 commissioners and 43 commission personnel whose duties include making a final decision on, holding a hearing for, or investigating a violation of post-

⁵² The FCOR, *Organization Overview*, available at <https://www.fcor.state.fl.us/overview.shtml> (last visited December 21, 2019)(hereinafter cited as "Organization Overview").

⁵³ The FCOR, *Agency Analysis for SB 872*, December 3, 2019, p. 2 (on file with the Senate Criminal Justice Committee) (hereinafter cited as the "FCOR Agency Analysis").

⁵⁴ Section 947.01, F.S.

⁵⁵ Section 947.03(1), F.S.

⁵⁶ Organization Overview.

⁵⁷ *Id.*

⁵⁸ The FCOR Agency Analysis, p. 2.

incarceration supervised release.⁵⁹ Current law does not provide a public records exemption for the commissioners or the commission personnel involved in these decisions.

III. Effect of Proposed Changes:

The bill creates a new public records exemption that applies to current or former commissioners of the FCOR or commission personnel whose duties include making certain final decisions on, holding hearings for, or investigating violations of post-incarceration release.

The bill exempts specific information from public records requirements for the above-mentioned entities including the:

- Home addresses, telephone numbers, dates of birth, and photographs of such personnel;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides that the exemption created under the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure specified information of certain agency personnel and their families. The public necessity statement notes:

[t]he Legislature finds...efforts of commissioners and commission personnel can have a direct effect on which persons are placed on parole or released on conditional medical release; on the terms and conditions of those persons released on parole, conditional release, conditional medical release, or addiction recovery supervision; and on the determination of whether a releasee has violated the terms of his or her parole. The Legislature finds that the release of such personal identifying information and location information might place these personnel of the Florida Commission on Offender Review and their family members in danger of physical and emotional harm by disgruntled individuals who react contentiously to actions taken by such personnel. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of such information.

The bill takes effect upon becoming a law.

⁵⁹ *Id.*

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

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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 enacts a new exemption for specified identification and location information for current or former commissioners of the FCOR or commission personnel with certain duties, thus, the bill requires a two-thirds vote to be enacted.

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 the FCOR commissioners and staff from any harm that could result from decisions that they must make for persons that they interact with as a result of their employment. This bill exempts only the relevant identifying and location information from the public records requirements. The exemption does not appear to 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:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.⁶⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 January 14, 2020:

The committee substitute limits the public records exemption to current or former commissioners of the Florida Commission on Offender Review or specified commission personnel by removing the provision establishing the exemption for school administrators.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶⁰ Section 119.07(2) and (4), F.S.



231474

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 293 - 386

and insert:

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a



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11 written request for maintenance of the exemption to the
12 custodial agency.

13 4. An officer, an employee, a justice, a judge, or other
14 person specified in subparagraph 2. may submit a written request
15 for the release of his or her exempt information to the
16 custodial agency. The written request must be notarized and must
17 specify the information to be released and the party that is
18 authorized to receive the information. Upon receipt of the
19 written request, the custodial agency shall release the
20 specified information to the party authorized to receive such
21 information.

22 5. The exemptions in this paragraph apply to information
23 held by an agency before, on, or after the effective date of the
24 exemption.

25 6. This paragraph is subject to the Open Government Sunset
26 Review Act in accordance with s. 119.15 and shall stand repealed
27 on October 2, 2024, unless reviewed and saved from repeal
28 through reenactment by the Legislature.

29 Section 2. (1)(a) The Legislature finds that it is a public
30 necessity to exempt from public records requirements the home
31 addresses, telephone numbers, dates of birth, and photographs of
32 current or former commissioners of the Florida Commission on
33 Offender Review and commission personnel whose duties include
34 making a final decision on, holding a hearing for, or
35 investigating a violation of post-incarceration supervised
36 release; the names, home addresses, telephone numbers, dates of
37 birth, photographs, and places of employment of the spouses and
38 children of such current or former commissioners and commission
39 personnel; and the names and locations of schools and day care



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40 facilities attended by the children of such current or former
41 commissioners and commission personnel.

42 (b) The efforts of commissioners and commission personnel
43 can have a direct effect on which persons are placed on parole
44 or released on conditional medical release; on the terms and
45 conditions of those persons released on parole, conditional
46 release, conditional medical release, or addiction recovery
47 supervision; and on the determination of whether a releasee has
48 violated the terms of his or her parole. The Legislature finds
49 that the release of such personal identifying information and
50 location information might place these personnel of the Florida
51 Commission on Offender Review and their family members in danger
52 of physical and emotional harm by disgruntled individuals who
53 react contentiously to actions taken by such personnel. The
54 Legislature further finds that the harm that may result from the
55 release of such personal identifying and location information
56 outweighs any public benefit that may be derived from the
57 disclosure of such information.

58 ===== T I T L E A M E N D M E N T =====

59 And the title is amended as follows:

60 Delete lines 11 - 17

61 and insert:

62 the exemption; providing a statement of public

By Senator Perry

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for the personal identifying and
 5 location information of current and former
 6 commissioners and specified commission personnel of
 7 the Florida Commission on Offender Review and the
 8 names and personal identifying and location
 9 information of the spouses and children of such
 10 personnel; providing for future review and repeal of
 11 the exemption; providing an exemption from public
 12 records requirements for the personal identifying and
 13 location information of school administrators and the
 14 names and personal identifying and location
 15 information of the spouses and children of school
 16 administrators; providing for future review and repeal
 17 of the exemption; providing statements of public
 18 necessity; providing an effective date.
 19
 20 Be It Enacted by the Legislature of the State of Florida:
 21
 22 Section 1. Paragraph (d) of subsection (4) of section
 23 119.071, Florida Statutes, is amended to read:
 24 119.071 General exemptions from inspection or copying of
 25 public records.—
 26 (4) AGENCY PERSONNEL INFORMATION.—
 27 (d)1. For purposes of this paragraph, the term:
 28 a. "Home addresses" means the dwelling location at which an
 29 individual resides and includes the physical address, mailing

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30 address, street address, parcel identification number, plot
 31 identification number, legal property description, neighborhood
 32 name and lot number, GPS coordinates, and any other descriptive
 33 property information that may reveal the home address.
 34 b. "Telephone numbers" includes home telephone numbers,
 35 personal cellular telephone numbers, personal pager telephone
 36 numbers, and telephone numbers associated with personal
 37 communications devices.
 38 2.a. The home addresses, telephone numbers, dates of birth,
 39 and photographs of active or former sworn law enforcement
 40 personnel or of active or former civilian personnel employed by
 41 a law enforcement agency, including correctional and
 42 correctional probation officers, personnel of the Department of
 43 Children and Families whose duties include the investigation of
 44 abuse, neglect, exploitation, fraud, theft, or other criminal
 45 activities, personnel of the Department of Health whose duties
 46 are to support the investigation of child abuse or neglect, and
 47 personnel of the Department of Revenue or local governments
 48 whose responsibilities include revenue collection and
 49 enforcement or child support enforcement; the names, home
 50 addresses, telephone numbers, photographs, dates of birth, and
 51 places of employment of the spouses and children of such
 52 personnel; and the names and locations of schools and day care
 53 facilities attended by the children of such personnel are exempt
 54 from s. 119.07(1) and s. 24(a), Art. I of the State
 55 Constitution.
 56 b. The home addresses, telephone numbers, dates of birth,
 57 and photographs of current or former nonsworn investigative
 58 personnel of the Department of Financial Services whose duties

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59 include the investigation of fraud, theft, workers' compensation
 60 coverage requirements and compliance, other related criminal
 61 activities, or state regulatory requirement violations; the
 62 names, home addresses, telephone numbers, dates of birth, and
 63 places of employment of the spouses and children of such
 64 personnel; and the names and locations of schools and day care
 65 facilities attended by the children of such personnel are exempt
 66 from s. 119.07(1) and s. 24(a), Art. I of the State
 67 Constitution.

68 c. The home addresses, telephone numbers, dates of birth,
 69 and photographs of current or former nonsworn investigative
 70 personnel of the Office of Financial Regulation's Bureau of
 71 Financial Investigations whose duties include the investigation
 72 of fraud, theft, other related criminal activities, or state
 73 regulatory requirement violations; the names, home addresses,
 74 telephone numbers, dates of birth, and places of employment of
 75 the spouses and children of such personnel; and the names and
 76 locations of schools and day care facilities attended by the
 77 children of such personnel are exempt from s. 119.07(1) and s.
 78 24(a), Art. I of the State Constitution.

79 d. The home addresses, telephone numbers, dates of birth,
 80 and photographs of current or former firefighters certified in
 81 compliance with s. 633.408; the names, home addresses, telephone
 82 numbers, photographs, dates of birth, and places of employment
 83 of the spouses and children of such firefighters; and the names
 84 and locations of schools and day care facilities attended by the
 85 children of such firefighters are exempt from s. 119.07(1) and
 86 s. 24(a), Art. I of the State Constitution.

87 e. The home addresses, dates of birth, and telephone

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88 numbers of current or former justices of the Supreme Court,
 89 district court of appeal judges, circuit court judges, and
 90 county court judges; the names, home addresses, telephone
 91 numbers, dates of birth, and places of employment of the spouses
 92 and children of current or former justices and judges; and the
 93 names and locations of schools and day care facilities attended
 94 by the children of current or former justices and judges are
 95 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 96 Constitution.

97 f. The home addresses, telephone numbers, dates of birth,
 98 and photographs of current or former state attorneys, assistant
 99 state attorneys, statewide prosecutors, or assistant statewide
 100 prosecutors; the names, home addresses, telephone numbers,
 101 photographs, dates of birth, and places of employment of the
 102 spouses and children of current or former state attorneys,
 103 assistant state attorneys, statewide prosecutors, or assistant
 104 statewide prosecutors; and the names and locations of schools
 105 and day care facilities attended by the children of current or
 106 former state attorneys, assistant state attorneys, statewide
 107 prosecutors, or assistant statewide prosecutors are exempt from
 108 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

109 g. The home addresses, dates of birth, and telephone
 110 numbers of general magistrates, special magistrates, judges of
 111 compensation claims, administrative law judges of the Division
 112 of Administrative Hearings, and child support enforcement
 113 hearing officers; the names, home addresses, telephone numbers,
 114 dates of birth, and places of employment of the spouses and
 115 children of general magistrates, special magistrates, judges of
 116 compensation claims, administrative law judges of the Division

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117 of Administrative Hearings, and child support enforcement
 118 hearing officers; and the names and locations of schools and day
 119 care facilities attended by the children of general magistrates,
 120 special magistrates, judges of compensation claims,
 121 administrative law judges of the Division of Administrative
 122 Hearings, and child support enforcement hearing officers are
 123 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 124 Constitution.

125 h. The home addresses, telephone numbers, dates of birth,
 126 and photographs of current or former human resource, labor
 127 relations, or employee relations directors, assistant directors,
 128 managers, or assistant managers of any local government agency
 129 or water management district whose duties include hiring and
 130 firing employees, labor contract negotiation, administration, or
 131 other personnel-related duties; the names, home addresses,
 132 telephone numbers, dates of birth, and places of employment of
 133 the spouses and children of such personnel; and the names and
 134 locations of schools and day care facilities attended by the
 135 children of such personnel are exempt from s. 119.07(1) and s.
 136 24(a), Art. I of the State Constitution.

137 i. The home addresses, telephone numbers, dates of birth,
 138 and photographs of current or former code enforcement officers;
 139 the names, home addresses, telephone numbers, dates of birth,
 140 and places of employment of the spouses and children of such
 141 personnel; and the names and locations of schools and day care
 142 facilities attended by the children of such personnel are exempt
 143 from s. 119.07(1) and s. 24(a), Art. I of the State
 144 Constitution.

145 j. The home addresses, telephone numbers, places of

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146 employment, dates of birth, and photographs of current or former
 147 guardians ad litem, as defined in s. 39.820; the names, home
 148 addresses, telephone numbers, dates of birth, and places of
 149 employment of the spouses and children of such persons; and the
 150 names and locations of schools and day care facilities attended
 151 by the children of such persons are exempt from s. 119.07(1) and
 152 s. 24(a), Art. I of the State Constitution.

153 k. The home addresses, telephone numbers, dates of birth,
 154 and photographs of current or former juvenile probation
 155 officers, juvenile probation supervisors, detention
 156 superintendents, assistant detention superintendents, juvenile
 157 justice detention officers I and II, juvenile justice detention
 158 officer supervisors, juvenile justice residential officers,
 159 juvenile justice residential officer supervisors I and II,
 160 juvenile justice counselors, juvenile justice counselor
 161 supervisors, human services counselor administrators, senior
 162 human services counselor administrators, rehabilitation
 163 therapists, and social services counselors of the Department of
 164 Juvenile Justice; the names, home addresses, telephone numbers,
 165 dates of birth, and places of employment of spouses and children
 166 of such personnel; and the names and locations of schools and
 167 day care facilities attended by the children of such personnel
 168 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 169 Constitution.

170 l. The home addresses, telephone numbers, dates of birth,
 171 and photographs of current or former public defenders, assistant
 172 public defenders, criminal conflict and civil regional counsel,
 173 and assistant criminal conflict and civil regional counsel; the
 174 names, home addresses, telephone numbers, dates of birth, and

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175 places of employment of the spouses and children of current or
 176 former public defenders, assistant public defenders, criminal
 177 conflict and civil regional counsel, and assistant criminal
 178 conflict and civil regional counsel; and the names and locations
 179 of schools and day care facilities attended by the children of
 180 current or former public defenders, assistant public defenders,
 181 criminal conflict and civil regional counsel, and assistant
 182 criminal conflict and civil regional counsel are exempt from s.
 183 119.07(1) and s. 24(a), Art. I of the State Constitution.

184 m. The home addresses, telephone numbers, dates of birth,
 185 and photographs of current or former investigators or inspectors
 186 of the Department of Business and Professional Regulation; the
 187 names, home addresses, telephone numbers, dates of birth, and
 188 places of employment of the spouses and children of such current
 189 or former investigators and inspectors; and the names and
 190 locations of schools and day care facilities attended by the
 191 children of such current or former investigators and inspectors
 192 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 193 Constitution.

194 n. The home addresses, telephone numbers, and dates of
 195 birth of county tax collectors; the names, home addresses,
 196 telephone numbers, dates of birth, and places of employment of
 197 the spouses and children of such tax collectors; and the names
 198 and locations of schools and day care facilities attended by the
 199 children of such tax collectors are exempt from s. 119.07(1) and
 200 s. 24(a), Art. I of the State Constitution.

201 o. The home addresses, telephone numbers, dates of birth,
 202 and photographs of current or former personnel of the Department
 203 of Health whose duties include, or result in, the determination

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204 or adjudication of eligibility for social security disability
 205 benefits, the investigation or prosecution of complaints filed
 206 against health care practitioners, or the inspection of health
 207 care practitioners or health care facilities licensed by the
 208 Department of Health; the names, home addresses, telephone
 209 numbers, dates of birth, and places of employment of the spouses
 210 and children of such personnel; and the names and locations of
 211 schools and day care facilities attended by the children of such
 212 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 213 the State Constitution.

214 p. The home addresses, telephone numbers, dates of birth,
 215 and photographs of current or former impaired practitioner
 216 consultants who are retained by an agency or current or former
 217 employees of an impaired practitioner consultant whose duties
 218 result in a determination of a person's skill and safety to
 219 practice a licensed profession; the names, home addresses,
 220 telephone numbers, dates of birth, and places of employment of
 221 the spouses and children of such consultants or their employees;
 222 and the names and locations of schools and day care facilities
 223 attended by the children of such consultants or employees are
 224 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 225 Constitution.

226 q. The home addresses, telephone numbers, dates of birth,
 227 and photographs of current or former emergency medical
 228 technicians or paramedics certified under chapter 401; the
 229 names, home addresses, telephone numbers, dates of birth, and
 230 places of employment of the spouses and children of such
 231 emergency medical technicians or paramedics; and the names and
 232 locations of schools and day care facilities attended by the

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233 children of such emergency medical technicians or paramedics are
 234 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 235 Constitution.

236 r. The home addresses, telephone numbers, dates of birth,
 237 and photographs of current or former personnel employed in an
 238 agency's office of inspector general or internal audit
 239 department whose duties include auditing or investigating waste,
 240 fraud, abuse, theft, exploitation, or other activities that
 241 could lead to criminal prosecution or administrative discipline;
 242 the names, home addresses, telephone numbers, dates of birth,
 243 and places of employment of spouses and children of such
 244 personnel; and the names and locations of schools and day care
 245 facilities attended by the children of such personnel are exempt
 246 from s. 119.07(1) and s. 24(a), Art. I of the State
 247 Constitution.

248 s. The home addresses, telephone numbers, dates of birth,
 249 and photographs of current or former directors, managers,
 250 supervisors, nurses, and clinical employees of an addiction
 251 treatment facility; the home addresses, telephone numbers,
 252 photographs, dates of birth, and places of employment of the
 253 spouses and children of such personnel; and the names and
 254 locations of schools and day care facilities attended by the
 255 children of such personnel are exempt from s. 119.07(1) and s.
 256 24(a), Art. I of the State Constitution. For purposes of this
 257 sub-subparagraph, the term "addiction treatment facility" means
 258 a county government, or agency thereof, that is licensed
 259 pursuant to s. 397.401 and provides substance abuse prevention,
 260 intervention, or clinical treatment, including any licensed
 261 service component described in s. 397.311(26).

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262 t. The home addresses, telephone numbers, dates of birth,
 263 and photographs of current or former directors, managers,
 264 supervisors, and clinical employees of a child advocacy center
 265 that meets the standards of s. 39.3035(1) and fulfills the
 266 screening requirement of s. 39.3035(2), and the members of a
 267 Child Protection Team as described in s. 39.303 whose duties
 268 include supporting the investigation of child abuse or sexual
 269 abuse, child abandonment, child neglect, and child exploitation
 270 or to provide services as part of a multidisciplinary case
 271 review team; the names, home addresses, telephone numbers,
 272 photographs, dates of birth, and places of employment of the
 273 spouses and children of such personnel and members; and the
 274 names and locations of schools and day care facilities attended
 275 by the children of such personnel and members are exempt from s.
 276 119.07(1) and s. 24(a), Art. I of the State Constitution.

277 u. The home addresses, telephone numbers, dates of birth,
 278 and photographs of current or former commissioners of the
 279 Florida Commission on Offender Review or commission personnel
 280 whose duties include making a final decision on, holding a
 281 hearing for, or investigating a violation of post-incarceration
 282 supervised release; the names, home addresses, telephone
 283 numbers, dates of birth, photographs, and places of employment
 284 of the spouses and children of such current or former
 285 commissioners and commission personnel; and the names and
 286 locations of schools and day care facilities attended by the
 287 children of such current or former commissioners and commission
 288 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 289 the State Constitution. This sub-subparagraph is subject to the
 290 Open Government Sunset Review Act in accordance with s. 119.15

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291 and shall stand repealed on October 2, 2025, unless reviewed and
 292 saved from repeal through reenactment by the Legislature.

293 v. The home addresses, telephone numbers, and dates of
 294 birth of school administrators as described in s. 1012.01(3)(c);
 295 the names, home addresses, telephone numbers, dates of birth,
 296 and places of employment of the spouses and children of school
 297 administrators; and the names and locations of schools and day
 298 care facilities attended by the children of school
 299 administrators are exempt from s. 119.07(1) and s. 24(a), Art. I
 300 of the State Constitution. This sub-subparagraph is subject to
 301 the Open Government Sunset Review Act in accordance with s.
 302 119.15 and shall stand repealed on October 2, 2025, unless
 303 reviewed and saved from repeal through reenactment by the
 304 Legislature.

305 3. An agency that is the custodian of the information
 306 specified in subparagraph 2. and that is not the employer of the
 307 officer, employee, justice, judge, or other person specified in
 308 subparagraph 2. shall maintain the exempt status of that
 309 information only if the officer, employee, justice, judge, other
 310 person, or employing agency of the designated employee submits a
 311 written request for maintenance of the exemption to the
 312 custodial agency.

313 4. An officer, an employee, a justice, a judge, or other
 314 person specified in subparagraph 2. may submit a written request
 315 for the release of his or her exempt information to the
 316 custodial agency. The written request must be notarized and must
 317 specify the information to be released and the party that is
 318 authorized to receive the information. Upon receipt of the
 319 written request, the custodial agency shall release the

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320 specified information to the party authorized to receive such
 321 information.

322 5. The exemptions in this paragraph apply to information
 323 held by an agency before, on, or after the effective date of the
 324 exemption.

325 6. This paragraph is subject to the Open Government Sunset
 326 Review Act in accordance with s. 119.15 and shall stand repealed
 327 on October 2, 2024, unless reviewed and saved from repeal
 328 through reenactment by the Legislature.

329 Section 2. (1)(a) The Legislature finds that it is a public
 330 necessity to exempt from public records requirements the home
 331 addresses, telephone numbers, dates of birth, and photographs of
 332 current or former commissioners of the Florida Commission on
 333 Offender Review and commission personnel whose duties include
 334 making a final decision on, holding a hearing for, or
 335 investigating a violation of post-incarceration supervised
 336 release; the names, home addresses, telephone numbers, dates of
 337 birth, photographs, and places of employment of the spouses and
 338 children of such current or former commissioners and commission
 339 personnel; and the names and locations of schools and day care
 340 facilities attended by the children of such current or former
 341 commissioners and commission personnel.

342 (b) The efforts of commissioners and commission personnel
 343 can have a direct effect on which persons are placed on parole
 344 or released on conditional medical release; on the terms and
 345 conditions of those persons released on parole, conditional
 346 release, conditional medical release, or addiction recovery
 347 supervision; and on the determination of whether a releasee has
 348 violated the terms of his or her parole. The Legislature finds

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349 that the release of such personal identifying information and
 350 location information might place these personnel of the Florida
 351 Commission on Offender Review and their family members in danger
 352 of physical and emotional harm by disgruntled individuals who
 353 react contentiously to actions taken by such personnel. The
 354 Legislature further finds that the harm that may result from the
 355 release of such personal identifying and location information
 356 outweighs any public benefit that may be derived from the
 357 disclosure of such information.

358 (2) (a) The Legislature finds that it is a public necessity
 359 to exempt from public records requirements the home addresses,
 360 telephone numbers, and dates of birth of school administrators;
 361 the names, home addresses, telephone numbers, dates of birth,
 362 and the places of employment of the spouses and children of
 363 school administrators; and the names and locations of schools
 364 and day care facilities attended by the children of school
 365 administrators.

366 (b) School administrators are charged with making decisions
 367 related to the discipline, suspension, or expulsion of students;
 368 reporting the presence of illicit substances on campus;
 369 reporting attendance issues that may result in the suspension of
 370 a student's driving privileges; and sanctions against the
 371 parents of truant students. The efforts of school administrators
 372 affect the academic placement of students, their promotion
 373 between grades, and their graduation. Such efforts include the
 374 reporting of students' absences, incidents of misbehavior, and
 375 students' academic achievements to the district superintendent.
 376 The efforts of school administrators also affect the employment
 377 of school personnel and can result in the transfer or suspension

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378 of employees. The Legislature finds that the release of such
 379 personal identifying information and location information might
 380 place these school administrators and their family members in
 381 danger of physical and emotional harm by disgruntled individuals
 382 who react contentiously to actions taken by such personnel. The
 383 Legislature further finds that the harm that may result from the
 384 release of such personal identifying and location information
 385 outweighs any public benefit that may be derived from the
 386 disclosure of such information.

387 Section 3. This act shall take effect upon becoming a law.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



2020 FCOR LEGISLATIVE BILL ANALYSIS

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 872
BILL TITLE:	Public Records/Commissioners and Specified Personnel/School Administrators
BILL SPONSOR:	Senator Perry
EFFECTIVE DATE:	Upon becoming a law

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Governmental Oversight and Accountability
3) Rules
4)
5)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	1796
SPONSOR:	Senator Perry
YEAR:	2019
LAST ACTION:	Died in Governmental Oversight and Accountability

<u>CURRENT COMMITTEE</u>
Criminal Justice

<u>SIMILAR BILLS</u>	
BILL NUMBER:	893
SPONSOR:	Rep. Watson (C)

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>Is this bill part of an agency package?</u>
Yes

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	12/03/2019
LEAD AGENCY ANALYST:	Alec Yarger, Legislative Affairs Director
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Lisa Martin, General Counsel
FISCAL ANALYST:	

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

SB 872 provides a public records exemption for the personal identifying and location information of current and former commissioners and specified commission personnel of the Florida Commission on Offender Review, as well as the personal identifying and location information of school administrators. The bill also provides exemptions for the names and personal identifying and location information of the spouses and children of such commissioners, commission personnel, and school administrators. The bill has no fiscal impact.

The bill is effective upon becoming a law.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Commission on Offender Review (FCOR) is a constitutionally authorized decision-making body formerly known as the Florida Parole Commission. Article IV, section 8 of the Florida Constitution provides that “there may be created by law a parole and probation commission with the power to supervise persons on probation and grant paroles or conditional releases to persons under sentences for crime.”

FCOR is responsible for determining whether to release offenders on parole or conditional medical release, as well as establishing the terms and conditions of supervision for post-incarceration supervised releases such as parole, conditional medical release, conditional release, addiction recovery release, and control release.

FCOR is also responsible for making final determinations regarding alleged violations of parole, conditional medical release, conditional release, addiction recovery release, and control release. If FCOR determines that a willful and substantial violation of supervision has occurred, the commissioners may vote to revoke supervision and return the offender to prison.

Additionally, FCOR acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency, in clemency matters.

FCOR commissioners and certain commission personnel are routinely involved in decisions which affect the incarceration or supervision status of convicted felons, many of whom are violent, habitual offenders. Currently, neither the commissioners nor the commission personnel involved in these decisions are exempt from public records.

As of January 8, 2020, there are 3 commissioners and 43 commission personnel whose duties include making a final decision on, holding a hearing for, or investigating a violation of post-incarceration supervised release.

2. EFFECT OF THE BILL:

Section 1:

The bill amends s. 119.071(4)(d)(2), F.S., to provide a public records exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former commissioners of the Florida Commission on Offender Review or commission personnel whose duties include making a final decision on, holding a hearing for, or investigating a violation of post-incarceration supervised release. The bill exempts the same information for the spouses and children of such current or former commissioners and commission personnel, as well as the names and locations of schools and day care facilities attended by the children of such current or former commissioners and commission personnel.

Additionally, the bill amends s. 119.071(4)(d)(2), F.S., to provide a public records exemption for the home addresses, telephone numbers, dates of birth, and photographs of school administrators as described in s. 1012.01(3)(c). The bill exempts the same information for the spouses and children of such school administrators, as well as the names and locations of schools and day care facilities attended by the children of such school administrators.

The bill provides that the public records exemptions are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the legislature.

Section 2:

The bill provides a public necessity statement for each exemption as required by the Florida Constitution.

The bill states that the release of such personal identifying information and location information might place these personnel of the Florida Commission on Offender Review and their family members in danger of physical and emotional harm by disgruntled individuals who react contentiously to actions taken by such personnel.

The bill states that the release of such personal identifying information and location information might place these school administrators and their family members in danger of physical and emotional harm by disgruntled individuals who react contentiously to actions taken by such personnel.

Section 3:

The bill provides that it will be effective upon becoming a law.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

If yes, explain:	No.
What is the expected impact to the agency's core mission?	Increases public safety by exempting specified agency personnel's identifying information from public record.
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	N/A
Provide a summary of the proponents' and opponents' positions:	N/A

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

If yes, provide a description:	No.
Date Due:	N/A
Bill Section Number:	N/A

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?

Board:	No.
Board Purpose:	N/A
Who Appointments:	N/A
Appointee Term:	N/A

Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	None.
Expenditures:	None.
Does the legislation increase local taxes or fees?	No.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	None.
Expenditures:	None.
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	N/A

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	None.
Expenditures:	None.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase taxes, fees or fines?	No.
Does the bill decrease taxes, fees or fines?	No.
What is the impact of the increase or decrease?	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	No.
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If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
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FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	No.
If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	<p>Lines 284-85 and 287-88 contain the phrase “such’ current or former commissioners and commission personnel.” Although the language for this clause is not consistent throughout § 119.071(4)(d)2., generally, where there was a title assigned to the class of exempted persons (for example, “justices or judges”, “state attorney”, or “public defender”), the phrase “current or former” was not preceded by the word “such.” Here, the subsection exempts persons with the title of “commissioner”, therefore, the use of the word “such” does not appear to be consistent with similar subsections. Additionally, in lines 284-85 and 287-88, the phrase “commission personnel” does not seem sufficiently specific to explain which personnel are covered by this specific clause. Other subsections rewrote the description of class of persons being exempted: here, this description would include “commission personnel whose duties include making a final decision on, holding a hearing for, or investigating a violation of post-incarceration supervised release.”</p> <p>The sunset provision included in the FCOR subsection, § 119.071(4)(d)2.u., has an expiration date of October 2, 2025. However, on Line 327, there is an expiration date of October 2, 2024, for paragraph (4)(d).</p>
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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 Criminal Justice

BILL: SB 884

INTRODUCER: Senators Hooper and Perry

SUBJECT: Law Enforcement and Correctional Officers

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wagoner	Jones	CJ	Favorable
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____

I. Summary:

SB 884 revises the definition of “law enforcement officer” and “correctional officer” to include those officers employed *part time* for the purposes of misconduct review proceedings under part VI of ch. 112, F.S. Part VI of ch. 112, F.S., is commonly referred to as the Law Enforcement Officers’ (LEO) Bill of Rights and affords certain rights and privileges for law enforcement officers and correctional officers.

The bill clarifies that *regardless of the allegation’s origin*, if the investigation of an allegation is not completed within 180 days after the date the agency receives notice of the allegation, an agency may not undertake any disciplinary action against a law enforcement officer or correctional officer. The bill also clarifies that *regardless of the allegation’s origin*, if the agency determines that disciplinary action is appropriate, it must give notice to the law enforcement officer or correctional officer within 180 days after the agency received notice of the alleged misconduct. The bill removes language that limited the 180-day period provision to external complaints.

The bill also allows a law enforcement officer or correctional officer to file for injunctive relief in certain situations. The bill requires the action for injunctive relief to be filed in the circuit court where the agency is located. The bill also specifies that clear and convincing evidence that an agency violated part VI of ch. 112, F.S., constitutes irreparable harm for purposes of injunctive relief.

The bill may have a fiscal impact on law enforcement and correctional agencies. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Law Enforcement Officers' Bill of Rights; Generally

Section 112.532, F.S., commonly known as the Law Enforcement Officers' (LEO) Bill of Rights,¹ affords law enforcement officers and correctional officers various rights and privileges when a law enforcement officer or a correctional officer is under investigation and subject to interrogation for a reason which could lead to disciplinary action, suspension, demotion, or dismissal. In general, the LEO Bill of Rights includes:

- The right to be informed of the nature of the investigation and the evidence against the law enforcement officer or correctional officer before any interrogation;
- The right to counsel during any interrogation;
- The right to be notified of the reasons for any disciplinary action before it is imposed;
- The right to a transcript of any interrogation;
- The right to a complete copy of the investigatory file; and
- The right to address the findings in the investigatory report with the agency before the disciplinary action is imposed.²

Additionally, the LEO Bill of Rights prescribes the conditions under which any interrogation of the officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, and restrictions on the interrogation techniques.³

Section 112.531(1), F.S., defines "law enforcement officer" as any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state. The term includes any person who is appointed by the sheriff as a deputy sheriff.

Section 112.531(2), F.S., defines "correctional officer" as any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution. The term includes correctional probation officers. The term does not include any secretarial, clerical, or professionally trained personnel.

Limitations Period for Disciplinary Actions

Section 112.532(6), F.S., provides that disciplinary action, suspension, demotion, or dismissal may not be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.

In *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, the First District Court of Appeals reviewed an agency's disciplinary action against a law enforcement officer where the

¹ *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, 148 So.3d 798 (Fla. 1st DCA 2014).

² Section 112.532(1)(d), (1)(g), (1)(i), (4)(a), and (4)(b), F.S.

³ Section 112.532(1)(a), (1)(b), (1)(c), (1)(e), and (1)(f), F.S.

proceeding investigation exceeded 180 days after an internal complaint was made.⁴ The court found the current language of the 180-day period provision excludes those complaints that originate internally.⁵ The court adopted its prior interpretation of the statute, reasoning that because the period is triggered by the agency's receipt of a complaint, the complaint would need to come from a person outside the agency for the 180-day provision to apply.⁶

If the agency determines that disciplinary action is appropriate, it shall complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action. Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct. The running of the limitations period may be tolled or extended under certain circumstances.⁷

Compliance Review Procedures

Section 112.534, F.S., provides review procedures and remedial measures if any law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, intentionally fails to comply with the requirements of the LEO Bill of Rights. The law enforcement officer or correctional officer⁸ is required to advise the investigator of the intentional violation of the LEO Bill of Rights alleged.⁹ If the investigator fails to cure the violation or continues the violation after being notified by the officer, the officer must request the agency head or his or her designee be informed of the alleged intentional violation.¹⁰ Once this request is made, the interview of the officer must cease.¹¹ Thereafter, a written notice of violation and request for a compliance review hearing must be filed within 3 working days with the agency head or designee which must contain sufficient information to identify the alleged intentional violation of the LEO Bill of Rights.¹²

Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a compliance review hearing is filed.¹³

⁴ *Supra* n. 1.

⁵ *Id.*

⁶ *Id.* See *McQuade v. Department of Corrections*, 51 So.3d 489 (Fla. 1st DCA 2010). See also *Migliore v. City of Lauderhill*, 415 So.2d 62 (Fla. 4th DCA 1982), *approved*, 431 So.2d 986 (Fla. 1983).

⁷ The running limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer; must be tolled during the time that any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of misconduct; must be tolled if the investigation involves an officer who is incapacitated or otherwise unavailable; may be extended during a multijurisdictional investigation to facilitate coordination with other agencies involved; may be tolled for certain emergencies or natural disasters; and must be tolled during the time that the officer's compliance hearing proceeding is continuing beginning with the filing of the notice of violation and a request for a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency. Section 112.532(6), F.S.

⁸ For purposes of s. 112.534, F.S., "law enforcement officer" and "correctional officer" includes the officer's representative or legal counsel until such point that a compliance review hearing is commenced. Section 112.534(1), F.S.

⁹ Section 112.534(1)(a), F.S.

¹⁰ Section 112.534(1)(b), F.S.

¹¹ *Id.* Refusal to respond to investigative questions by the officer does not constitute insubordination or any similar type of policy violation.

¹² Section 112.534(1)(c), F.S.

¹³ An alternate date may be chosen by mutual agreement of the officer and agency or for extraordinary reasons. Section 112.534(1)(d), F.S.

An officer under investigation for a disciplinary matter is entitled to a compliance review hearing to review alleged violations of the LEO Bill of Rights, regardless of the source of the complaint that led to the investigation.¹⁴ The compliance review panel¹⁵ reviews the circumstances and facts surrounding the alleged intentional violation and must determine whether or not the investigator or agency intentionally violated the requirements of the LEO Bill of Rights.¹⁶

A compliance review hearing is not available to review violations occurring after the investigation is complete.¹⁷ If an alleged violation is sustained by the compliance review panel, s. 112.534(1)(g), F.S., provides for a limited remedial measure of such violation: the agency head must immediately remove the investigator from any further involvements with the investigation of the office.^{18, 19}

III. Effect of Proposed Changes:

The bill revises the definition of “law enforcement officer” and “correctional officer” to include those officers employed *part time* for the purposes of misconduct review proceedings under part VI of ch. 112, F.S.

Currently, complaints that originate internally are not subject to the provision that requires investigations to be completed within the 180-day time period. The bill clarifies that *regardless of the allegation’s origin*, if the investigation of an allegation is not completed within 180 days after the date the agency receives notice of the allegation, an agency may not undertake any disciplinary action against a law enforcement officer or correctional officer. The bill also clarifies that *regardless of the allegation’s origin*, if the agency determines that disciplinary action is appropriate, it must give notice to the law enforcement officer or correctional officer within 180 days after the agency received notice of the alleged misconduct. The bill removes language that limited the 180-day period provision to external complaints.

The bill also allows a law enforcement officer or correctional officer to file for injunctive relief in certain situations. Specifically, if any law enforcement agency or correctional agency, including investigators in an agency’s internal affairs or professional standards division or an assigned investigating supervisor, fails to comply with the requirements of part VI of ch. 112,

¹⁴ *Supra* n. 1.

¹⁵ The compliance review panel is made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member to be selected by the other two members. These members must be active law enforcement or correctional officers from the same law enforcement discipline as the officer filing the request. The panel may be selected from any state, county, or municipal agency within the county in which the officer works. Section 112.534(1)(d), F.S.

¹⁶ Section 112.534(1)(e), F.S.

¹⁷ *Supra* n. 1.

¹⁸ Additionally, the agency head must direct an investigation to be initiated against the investigator determined to have intentionally violated the agency disciplinary action procedures under this part. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position. Section 112.534(1)(g), F.S.

¹⁹ *Supra* n. 1. In *Fraternal Order of Police*, the First District Court of Appeal described the exclusive purpose of the compliance review hearing as a remedy to violations of the LEO Bill of Rights occurring during the investigation, not a name-clearing hearing, by relying on this limited remedy.

F.S., an officer who is personally injured by such failure to comply may file for injunctive relief to enforce the requirements of part VI of ch. 112, F.S.

The bill also provides for injunctive relief if the injury suffered by the officer employed by or appointed to such agency is not capable of being remedied by a compliance review hearing. The officer who is personally injured by such failure to comply may file an action for injunctive relief to enforce the requirements of part VI of ch. 112, F.S.

The bill requires the action for injunctive relief to be filed in the circuit court where the agency is located. The bill also specifies that clear and convincing evidence²⁰ that an agency violated part VI of ch. 112, F.S., constitutes irreparable harm for purposes of injunctive relief.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁰ Clear and convincing evidence may be defined as an: “intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.” *In re Davey*, 645 So.2d 398, 404 (Fla. 1994).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires all law enforcement and correctional agencies to comply with the LEO Bill of Rights for part time law enforcement officers and correctional officers under investigation and subject to interrogation that could lead to disciplinary action. The bill also requires investigations of allegations raised internally and externally to be completed within 180 days. The bill also provides for a private right of action for violations of the LEO Bill of Rights. Therefore, the fiscal impact on these agencies will vary based on part time officers employed and frequency of complaints raised internally.

The Department of Highway Safety and Motor Vehicles reports that the bill does not appear to have any fiscal impact on the department.²¹

The Department of Corrections (DOC) reports that most allegations against correctional officers are raised internally. Therefore, the DOC reports that the bill would significantly impact the resources necessary to conduct the investigations within the required timeframe.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.531, 112.532, and 112.534.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

²¹ The DHSMV, *2020 Agency Analysis for SB 884*, p. 3, December 18, 2019 (on file with the Senate Criminal Justice Committee).

²² E-mail received from the Department of Corrections, to committee staff (January 10, 2020) (on file with the Senate Criminal Justice Committee).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Hooper

16-00956A-20

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A bill to be entitled

An act relating to law enforcement and correctional officers; reordering and amending s. 112.531, F.S.; revising the definitions of "correctional officer" and "law enforcement officer" to include persons employed on a part-time basis; amending s. 112.532, F.S.; authorizing an agency to take disciplinary action against a correctional officer or law enforcement officer accused of misconduct within a specified timeframe, regardless of the allegation's origin; requiring an agency to provide an officer with notice of alleged misconduct within a specified timeframe, regardless of the allegation's origin; amending s. 112.534, F.S.; authorizing an officer to bring an action for injunctive relief if a law enforcement or correctional agency fails to comply with certain requirements of part VI of ch. 112, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 112.531, Florida Statutes, is reordered and amended to read:

112.531 Definitions.—As used in this part, the term:

(2)(1) "Law enforcement officer" means any person, other than a chief of police, who is employed full time or part time by any municipality, ~~or~~ the state, or any political subdivision thereof, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or

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highway laws of this state. The term, ~~and~~ includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07.

(1)(2) "Correctional officer" means any person, other than a warden, who is appointed or employed full time or part time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution. The term, ~~and~~ includes correctional probation officers, as defined in s. 943.10(3). ~~However,~~ The term "~~correctional officer~~" does not include any secretarial, clerical, or professionally trained personnel.

Section 2. Paragraph (a) of subsection (6) of section 112.532, Florida Statutes, is amended to read:

112.532 Law enforcement officers' and correctional officers' rights.—All law enforcement officers and correctional officers employed by or appointed to a law enforcement agency or a correctional agency shall have the following rights and privileges:

(6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

(a) Except as provided in this subsection, disciplinary action, suspension, demotion, or dismissal may not be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct, regardless of the allegation's origin, if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation ~~by a person authorized by the agency to initiate an investigation of the misconduct~~. If the agency determines that disciplinary

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59 action is appropriate, it shall complete its investigation and
 60 give notice in writing to the law enforcement officer or
 61 correctional officer of its intent to proceed with disciplinary
 62 action, along with a proposal of the specific action sought,
 63 including length of suspension, if applicable. Notice to the
 64 officer must be provided within 180 days after the date the
 65 agency received notice of the alleged misconduct, regardless of
 66 the allegation's origin, except as follows:

67 1. The running of the limitations period may be tolled for
 68 a period specified in a written waiver of the limitation by the
 69 law enforcement officer or correctional officer.

70 2. The running of the limitations period is tolled during
 71 the time that any criminal investigation or prosecution is
 72 pending in connection with the act, omission, or other
 73 allegation of misconduct.

74 3. If the investigation involves an officer who is
 75 incapacitated or otherwise unavailable, the running of the
 76 limitations period is tolled during the period of incapacitation
 77 or unavailability.

78 4. In a multijurisdictional investigation, the limitations
 79 period may be extended for a period of time reasonably necessary
 80 to facilitate the coordination of the agencies involved.

81 5. The running of the limitations period may be tolled for
 82 emergencies or natural disasters during the time period wherein
 83 the Governor has declared a state of emergency within the
 84 jurisdictional boundaries of the concerned agency.

85 6. The running of the limitations period is tolled during
 86 the time that the officer's compliance hearing proceeding is
 87 continuing beginning with the filing of the notice of violation

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88 and a request for a hearing and ending with the written
 89 determination of the compliance review panel or upon the
 90 violation being remedied by the agency.

91 Section 3. Present subsection (2) of section 112.534,
 92 Florida Statutes, is renumbered as subsection (3), and a new
 93 subsection (2) is added to that section, to read:

94 112.534 Failure to comply; official misconduct.—

95 (2) If any law enforcement agency or correctional agency,
 96 including investigators in an agency's internal affairs or
 97 professional standards division or an assigned investigating
 98 supervisor, fails to comply with the requirements of this part,
 99 or if the injury suffered by the law enforcement officer or
 100 correctional officer employed by or appointed to such agency is
 101 not capable of being remedied by a compliance review hearing,
 102 the officer who is personally injured by such failure to comply
 103 may file an action for injunctive relief in the circuit court
 104 where the agency is located to enforce the requirements of this
 105 part. Clear and convincing evidence that an agency violated this
 106 part constitutes irreparable harm for purposes of injunctive
 107 relief.

108 Section 4. This act shall take effect July 1, 2020.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.14.2020

Meeting Date

884

Bill Number (if applicable)

Topic 112 Bill of Rights

Amendment Barcode (if applicable)

Name MIKE KELLEY

Job Title CHAIRMAN FLORIDA FOP

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TALLAHASSEE

FL

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State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FRATERNAL ORDER OF POLICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

884

Bill Number (if applicable)

Topic Law Enforcement/Corrections Bill of Rights

Amendment Barcode (if applicable)

Name Matt Pickett

Job Title Lobbyist

Address 300 East Brevard St.

Phone

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Police Benevolent Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/14/2020

Meeting Date

SB 884

Bill Number (if applicable)

Topic Law Enforcement and Correctional Officers

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

Email garywhester@gmail.com

City

State

Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

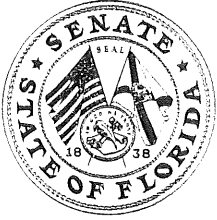
Representing Florida Police Chiefs Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Administrative Procedures Committee

December 9th, 2019

Honorable Keith Perry, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Perry,

I am writing to request that SB 884, Law Enforcement and Correctional Officers, be placed on the agenda to be heard in the Criminal Justice Committee.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Hooper", written over a circular stamp or mark.

Ed Hooper

Cc: Staff Director, Lauren Jones
Administrative Assistant, Sue Arnold

REPLY TO:

- 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Highway Safety and Motor Vehicles

BILL INFORMATION	
BILL NUMBER:	SB 884
BILL TITLE:	<u>Law Enforcement and Correctional Officers</u>
BILL SPONSOR:	Senator Hooper
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Appropriations Subcommittee on Criminal & Civil Justice
3) Appropriations
4)
5)

CURRENT COMMITTEE
Criminal Justice

SIMILAR BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS	
BILL NUMBER:	HB 453
SPONSOR:	Duggan

Is this bill part of an agency package?

BILL ANALYSIS INFORMATION	
Date of Analysis:	November 1, 2019: Mike McCaskill, Lindsey Eppes, Major Gary Howze, Captain Todd Carter – FHP.
Division Director/Designee MS	
Division Director/Designee FHP	<i>Michael McGowan AA 11/25/19 SSL 12/2/19</i>
Bureau Chief(s):	
Additional Analyst(S):	
Legal Analyst:	November 22, 2019: Rich Coln/Tom Moffett/Gregory Pitt - OGC
Fiscal Analyst:	November 19, 2019: Suzie Carey - Budget

OC 12/17/2019

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Senate Bill 884 (“the bill”) reorders and amends the definitions in s. 112.531, F.S., amends s. 112.532, F.S., to specify that an allegation of misconduct may originate from any source, amends s. 112.534, F.S., to authorize an officer to bring an action for injunctive relief if a law enforcement or correctional agency fails to comply with specified provisions, and provides a presumption of irreparable harm.

If passed, the bill shall take effect July 1, 2020.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 112.531, F.S., currently excludes part-time employees from the definitions of “correctional officer” and “law enforcement officer.”

Section 112.532, F.S., currently forbids an agency from taking various forms of disciplinary action against a law enforcement or correctional officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.

2. EFFECT OF THE BILL:

The bill amends s. 112.531, F.S., to include part-time employees in the definitions of “law enforcement officer” and “correctional officer.”

The bill amends s. 112.532, F.S., to include complaints of misconduct among the acts for which an agency may not take disciplinary action against a law enforcement or correctional officer if an investigation is not completed within 180 days. The bill also strikes the requirement that the allegation be received by a person authorized by the agency to initiate an investigation of the misconduct.

The bill also amends s. 112.534, F.S., to allow an injured law enforcement or correctional officer to file an action for injunctive relief in circuit court if the agency fails to comply with the above requirements or if the injury suffered is not capable of being remedied by a compliance review hearing.

The Florida Highway Patrol (“FHP”) does not employ part-time law enforcement officers, so the expansion of the definition of law enforcement officer will not impact the Department of Highway Safety and Motor Vehicles (“the Department”). FHP Reserve Troopers and FHP Auxiliary Officers are volunteers who serve at the discretion of the Director, and they are therefore not entitled to provisions of the Police Officers’ Bill of Rights.

If the bill becomes law, the Department will update its complaint resolution policy¹ and will train employees on its updated complaint intake process.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	
Is the change consistent with the agency’s core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

¹ FHP Policy 8.01, Complaint Resolution Process.

Proponents and summary of position:	
Opponents and summary of position:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y N

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**Y N

Revenues:	None
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	NA

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y N

Revenues:	None
Expenditures:	This bill does not appear to have any fiscal impact on the department.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	NA

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y N

Revenues:	None
Expenditures:	No
Other:	NA

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y N

If yes, explain impact.	No
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Bill Section Number:	NA
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TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	This legislation does not appear to have any impact on the Department's technology systems.
--	---

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	
--	--

ADDITIONAL COMMENTS

Lines 47-61: The addition of "complaint" may be interpreted as broadening the scope of what an agency should investigate and ultimately take disciplinary action for. The phrase "received notice of the allegation" implies a standard of potential or accused misconduct by a member. Inclusion of "complaint" may be interpreted to include procedural dissatisfactions by the public or internal personnel allegations. Exacerbating this is the bill's addition of language stating that the origin of the allegation or complaint is not a factor. This change will require the Department to examine and possibly revise its policies regarding anonymous complaints.

In addition, FHP policy 8.01, Complaint Resolution Process, already defines the word "complaint" as:

Any allegation, verbal or written, against a member or employee from a citizen, supervisor or other employee coming to the Division's attention, that if true, would constitute a violation of the Standards of Disciplinary Action identified in DHSMV Policy #3.06, other Division policy, and/or Chapter 60L-36 Florida Administrative Code. A disagreement with a policy or law or the proper application of a policy or law is not considered a complaint.

Finally, the bill's removal of language requiring an allegation to be received by a person authorized to initiate an investigation is not consistent with current Department procedure and may present problems regarding complaint tracking. Due to the 24/7 public access to most areas of FHP, it possible that an agency member may receive a complaint and fail to pass it along to an appropriate person, thus causing the Department's 180-day investigation clock to begin. If such a complaint is later reported elsewhere, the Department may find itself outside its 180-day window to initiate an investigation. If the bill is passed, FHP must amend its policies, procedures, and training materials to ensure all Department employees are familiar with law enforcement complaint intake protocols.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	None.
---------------------------	-------

Wagoner, Tessa

From: Jones, Lauren
Sent: Friday, January 10, 2020 12:01 PM
To: Wagoner, Tessa
Subject: FW: SB 884

FYI

Lauren Jones
Staff Director
Senate Committee on Criminal Justice
(850) 487-5192
Jones.Lauren@flsenate.gov

From: Torres, Jared <Jared.Torres@fdc.myflorida.com>
Sent: Friday, January 10, 2020 12:01 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Cc: Jones, Lauren <JONES.LAUREN@flsenate.gov>; Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>; Taylor, Chris <WillardChris.Taylor@fdc.myflorida.com>; Donaldson, Trish <Trish.Donaldson@fdc.myflorida.com>
Subject: RE: SB 884

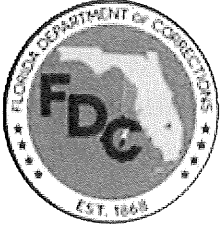
FYI. Please see below initial brief from FDC's General Counsel regarding SB 884. Thank you.

This bill appears to make three very important changes to the Officer's Bill of Rights. First it changes the start time for the 180 day clock from the when the agency receives notice from "a person authorized by the agency to initiate an investigation", i.e. the IG's personnel, to anyone.

Second, currently, based on case law (*McQuade v. Florida Department of Corrections*, 51 So.3d 489 (1st DCA, 2010)), the 180 clock runs on allegations from outside the agency, **not** internal complaints. The language "regardless of the allegation's origin" changes the findings from the case and will now apply to all allegations, even those raised internally. This will significantly impact the timeframe for investigations and the necessary resources needed to conduct the investigations, as most allegations are raised internally.

Third, this language creates a private right of action for an officer who believes the remedy of a compliance review hearing is not sufficient. Currently, the remedy available to an officer through the compliance review hearing is for the agency to comply with whatever right the officer proved was violated, and a subsequent investigation into the individual who violated the right.

Kenneth S. Steely
General Counsel
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500
Office: 850-717-3605
Direct: 850-717-3589
Fax: 850-922-4355



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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 Criminal Justice

BILL: SB 888

INTRODUCER: Senator Perry

SUBJECT: Public Nuisances

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Favorable
2.			CA	
3.			RC	

I. Summary:

SB 888 amends s. 60.05, F.S., which generally provides for enjoinder of public nuisances. The bill amends this statute to:

- Extend and increase the frequency of notice so a property owner has sufficient time to receive notice and correct the use of the property;
- Allow for shorter notice where the public nuisance presents a danger of immediate and irreparable injury; and
- Provide more detail on what must be provided in the notice and serving the notice.

The bill also amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” for the purpose of engaging in a criminal gang-related activity in order for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property, assault, aggravated assault, battery, aggravated battery, burglary, theft, or robbery by sudden snatching, may be declared a public nuisance and may be abated or enjoined; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

The bill also amends s. 893.138, F.S., relating to public nuisances, to authorize a place or premises to be declared a public nuisance, which may be abated, if the place or premises has been used on more than two occasions within a six-month period as the site of any combination

of the following offenses: murder; attempted felony murder; aggravated battery with a deadly weapon; or aggravated assault with deadly weapon without intent to kill.

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses, if they have sustained an economic loss, and a cost-savings or cost-avoidance to local governments if they have sustained an economic loss. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2020.

II. Present Situation:

Enjoining or Abating a Public Nuisance (ss. 60.05 and 60.06, F.S.)

Public nuisances are generally enjoined pursuant to s. 60.05, F.S., and abated pursuant to s. 60.06, F.S.¹ Section 60.05(1), F.S., authorizes the Attorney General, state attorney, city attorney, county attorney, and any citizen of the county to sue in the name of the state to enjoin the nuisance, the person(s) maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court, based on evidence² or affidavit, may issue a temporary injunction enjoining:

- The maintaining of a nuisance;
- The operating and maintaining of the place or premises where the nuisance is maintained;
- The owner or agent of the building or ground upon which the nuisance exists; and
- The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.³

The injunction must specify the activities enjoined and must not preclude the operation of any lawful business not conducive to the maintenance of the alleged nuisance.⁴ If the existence of a nuisance is shown at the final hearing, the court must issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance.⁵ The court must adjudge that the costs are a lien on all personal property found in the place of the nuisance; however, if the property fails to bring enough to pay costs, the lien is on the real estate occupied by the nuisance.⁶

Section 60.06, F.S., requires the court, upon “proper” proof, to order the abatement of all nuisances mentioned in s. 823.05, F.S., and authorizes the court to enforce injunctions by

¹ Section 823.05(1), (2)(b) and (c), and (3), F.S.

² Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of a nuisance. Section 60.05(3), F.S.

³ Section 60.05(2), F.S.

⁴ Section 60.05(2), F.S. At least 3 days’ notice in writing shall be given to the defendant of the time and place of application for the temporary injunction. *Id.*

⁵ Section 60.05(4), F.S.

⁶ *Id.* However, no lien attaches to the real estate of any person other than the person establishing or maintaining the nuisance unless five days’ written notice has been given to the owner or owner’s agent who fails to abate the nuisance within this five-day period. *Id.*

contempt. However, this jurisdiction does not repeal or alter s. 823.01, F.S., which provides criminal penalties for nuisances described in that section.⁷

**Public Nuisances: Places and Groups Engaged in Criminal Gang-Related Activity
(s. 823.05, F.S.)**

Section 823.05(1), F.S., provides that a person is guilty of maintaining a public nuisance⁸ if he or she erects, establishes, continues, or maintains, owns or leases any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S., or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated. The building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a public nuisance.

Section 823.05(2), F.S., provides that a criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity⁹ is a public nuisance,¹⁰ and the use of a location on two or more occasions by a criminal gang or member or associate of such gang for the purpose of engaging in criminal gang-related activity is also a public nuisance.¹¹

Section 823.05(2), F.S., does not prevent a local governing body from adopting and enforcing laws consistent with ch. 823, F.S., relating to criminal gangs and gang violence.¹² Further, the state, through the Department of Legal Affairs or any state attorney, or any of the state's agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over conduct in violation of a provision of ch. 823, F.S., may institute civil proceedings under s. 823.05(2)(e), F.S., and, pending final determination, the circuit court may enter injunctions, prohibitions, or restraining orders, or take such other actions it deems proper.¹³

⁷ Section 60.06, F.S.

⁸ Although s. 823.05(1), F.S., refers to a person being "guilty of maintaining a public nuisance," s. 823.05, F.S., does not make maintaining a public nuisance a crime. However, s. 823.01, F.S., provides that all nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are second degree misdemeanors, except that a violation of s. 823.10, F.S., is a third degree felony. Section 823.10(1), F.S., provides that certain places visited by persons for the purpose of unlawfully using any controlled substance under ch. 893, F.S. (Florida Comprehensive Drug Abuse Prevention and Control Act), or any drugs as described in ch. 499, F.S. (Florida Drug and Cosmetic Act), or for the illegal keeping, selling, or delivering of such substance or drug, are a public nuisance. Any person who willfully keeps or maintains, or aids or abets another in keeping or maintaining, such public nuisance commits a third degree felony, if such public nuisance is a warehouse, structure, or building. *Id.*

⁹ Section 823.05(2)(a), F.S., defines the terms "criminal gang," "criminal gang member," "criminal gang associate," and "criminal gang-related activity" by reference to the definitions of those terms in s. 874.03, F.S.

¹⁰ Section 823.05(2)(b), F.S. Section 893.138(2)(d), F.S., also provides that any place or premises that has been used by a criminal gang for the purpose of conducting criminal gang activity may be declared a public nuisance. Additionally, if the place or premises has been used on more than two occasions within a six-month period as the site of dealing in stolen property or a violation of ch. 499, F.S., such location may be declared a public nuisance. Unlike s. 823.05, F.S., a public nuisance described in s. 893.138, F.S., is abated pursuant to procedures provided in that section. Section 893.138(2)-(7), F.S. However, the public nuisance may be enjoined pursuant to s. 60.05, F.S. Section 893.138(9), F.S.

¹¹ Section 823.05(2)(c), F.S.

¹² Section 823.05(2)(d), F.S.

¹³ Section 823.05(2)(e), F.S.

Local Administrative Action to Abate Prohibited Activity Relating to Drugs, Prostitution, Stolen Property, or Criminal Street Gangs (s. 893.138, F.S.)

Section 893.138(2), F.S., provides that a place or premises may be declared a public nuisance, which may be abated, if the place or premises has been used:

- On more than two occasions within a 6-month period, as the site of a violation of s. 796.07, F.S. (prostitution and related acts);
- On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- By a criminal gang for the purpose of conducting criminal gang activity;
- On more than two occasions within a 6-month period, as the site of a violation of s. 812.019, F.S. (stolen property); or
- On two or more occasions within a 6-month period, as the site of a violation of ch. 499, F.S. (the “Florida Drug and Cosmetic Act”).

A county or municipality, by ordinance, may create an administrative board to hear complaints regarding the nuisances described in s. 893.138(2), F.S. Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days’ written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises has an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance.¹⁴

If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

- The maintaining of the nuisance;
- The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.¹⁵

The board may also bring a complaint under s. 60.05, F.S., seeking temporary and permanent injunctive relief against any public nuisance described in s. 893.138(2), F.S.¹⁶ Further, nothing

¹⁴ Section 893.138(4), F.S.

¹⁵ Section 893.138(5), F.S. The order expires after 1 year or at such earlier time as is stated in the order. Section 893.138(6), F.S. The order may be enforced pursuant to the procedures contained in s. 120.69, F.S., which provides for enforcement of an agency action under ch. 120, F.S. (the “Administrative Procedure Act” or APA), but a municipality that creates a board under s. 893.138, F.S., or the board so created, is not subject to any other provision of the APA. Section 893.138(7), F.S.

¹⁶ Section 893.138(8), F.S. Additionally, s. 893.138, F.S., does not restrict the right of any person to proceed under s. 60.05, F.S., against any public nuisance. Section 893.138(9), F.S.

contained in s. 893.138, F.S., prohibits a county or municipality from proceeding against a public nuisance by any other means.¹⁷

Section 893.138, F.S., may be supplemented by a county or municipal ordinance. The ordinance may include, but is not limited to, provisions that:

- Establish additional penalties for public nuisances, including fines not to exceed \$250 per day;
- Provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- Provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance;
- Establish penalties, including fines not to exceed \$500 per day for recurring public nuisances;
- Provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;
- Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and
- Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure.¹⁸

Real Property and the Florida Contraband Forfeiture Act

The “Florida Contraband Forfeiture Act” (Act)¹⁹ authorizes seizure and civil forfeiture of real property used in violation of the provisions of the Act.²⁰ The seizure may only occur if the owner of the property is arrested for a criminal offense²¹ that forms the basis for determining that the property is a “contraband article” under s. 932.701, F.S.,²² or when one or more statutorily-specified exceptions to this arrest requirement apply.²³ For example, one specified exception is

¹⁷ Section 893.138(11), F.S.

¹⁸ Total fines may not exceed \$15,000. A lien cannot be foreclosed on real property which is a homestead. Where a local government seeks to bring an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner is not subject to a lien against his or her property or the prohibition of operation if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant. *Id.*

¹⁹ Sections 932.701-932.7062, F.S. See s. 932.701(1), F.S.

²⁰ Section 932.703(1)(a), F.S. Real property may not be seized or restrained, other than by *lis pendens*, subsequent to a violation of the Florida Contraband Forfeiture Act until the persons entitled to notice are afforded the opportunity to attend the pre-seizure adversarial preliminary hearing. Section 932.703(3)(b), F.S. “A notice of *lis pendens* is an instrument which may be filed with the clerk of the circuit court in connection with actions involving the ownership of, or interest in, property. It is intended to operate as constructive notice to persons dealing with the property that is the subject matter of litigation.” *Op. Att’y Gen. Fla. 58-135 (1958)*. Other requirements relating to seizure are specified in s. 932.703, F.S. Forfeiture proceedings are addressed in s. 932.704, F.S., and disposition of liens and forfeited property are addressed in s. 932.7055, F.S.

²¹ Section 932.703(1)(a), F.S.

²² The definition of “contraband article” in s. 932.701(2), F.S., includes an extensive list of tangible items. One of these items is real property used or attempted to be used as an instrumentality in the commission of, or in aiding or abetting the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Act. Section 932.701(2)(a)6., F.S. See s. 932.702, F.S. (unlawful acts involving a contraband article).

²³ Section 932.703(1)(a), F.S.

when the property is not owned by the person arrested for a criminal offense that forms the basis for determining that the property is a “contraband article,” but the owner of the property had actual knowledge of the criminal activity.²⁴

As previously noted, s. 823.05, F.S., in part, addresses criminal gang-related activity. Section 874.08, F.S., provides that the following are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act:

- All profits, proceeds, and instrumentalities of criminal gang activity;
- All property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or of any criminal gang member;
- All profits, proceeds, and instrumentalities of criminal gang recruitment; and
- All property used or intended or attempted to be used to facilitate criminal gang recruitment.

III. Effect of Proposed Changes:

Public nuisances are generally enjoined pursuant to s. 60.05, F.S. The bill amends this statute to increase the notice requirements from one three-day notice to two notices (if needed) with a total of 25 days to abate the nuisance. The defendant must be given written notice (first notice) to abate the public nuisance within 10 days after issuance of the notice. The first notice must inform the defendant that an application for temporary injunction may be filed if the nuisance is not timely abated. If the nuisance is not timely abated, the defendant must be given a second written notice that informs the defendant that an application for a temporary injunction will be filed if the nuisance is not abated within 15 days after the end of the initial 10-day period. This notice also must provide the location where the application will be filed and the time when it will be filed. If the nuisance is not timely abated as provided in the second notice, the application for the temporary injunction must be filed as indicated in the notice.

Contents of the notice must also include:

- If applicable, a description of the building, booth, tent, or place that is declared a public nuisance;
- A statement of the activities that led to the public nuisance being declared;
- A statement of the actions necessary to abate the public nuisance; and
- A statement that costs will be assessed if abatement of the public nuisance is not completed and if the court determines that the public nuisance exists.

Required notices must be sent by personal service to the owner at his or her address as it appears on the latest tax assessment roll or to the tenant of such address. If an address is not found for the owner, notices must be sent to the location of the declared nuisance and displayed prominently and conspicuously at that location. The notice timeframe before a lien may attach when the property is owned by someone other than the person causing the public nuisance is extended from five days to 15 days.

²⁴ Section 932.703(1)(a)3., F.S. Evidence that the owner received notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the Act on a prior occasion by the arrested person, may be used to establish actual knowledge. *Id.*

If a nuisance presents a danger of immediate and irreparable injury to a person or to the safety of a community, the previously-described notice requirements are waived, and only one notice is required, which must inform the defendant that the application for a temporary injunction will be filed if the nuisance is not abated within a designated timeframe of between 24 and 72 hours. The notice also must identify the location where the application will be filed and the time when it will be filed.

The bill also amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” for the purpose of engaging in a criminal gang-related activity in order for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property (s. 812.019, F.S.), assault (s. 784.011, F.S.), aggravated assault (s. 784.021, F.S.), battery (s. 784.03, F.S.), aggravated battery (s. 784.045, F.S.), burglary (s. 810.02, F.S.),²⁵ theft (s. 812.014, F.S.), or robbery by sudden snatching (s. 812.131, F.S.), may be declared a public nuisance and may be abated or enjoined as provided in s. 60.05, F.S., or s. 60.06, F.S.; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

The bill also restructures s. 823.05(1), F.S., which defines what constitutes a public nuisance and what may be abated or enjoined as a public nuisance. This is not a substantive change because nothing of a substantive nature is eliminated from or added to that subsection.

The bill also amends s. 893.138, F.S., relating to public nuisances, to authorize a place or premises to be declared a public nuisance, which may be abated, if the place or premises has been used on more than two occasions within a six-month period as the site of any combination of the following offenses: murder (s. 782.04, F.S.); attempted felony murder (s. 782.051, F.S.); aggravated battery with a deadly weapon (s. 784.045(1)(a)2., F.S.); or aggravated assault with deadly weapon without intent to kill (s. 784.021(1)(a), F.S.).

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require 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.

²⁵ Armed burglary is also included in this section. *See* s. 810.02(2)(b), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses, if they have sustained an economic loss (e.g., decreased home and business property values and loss of customers) as a result of the presence of the nuisance.

C. Government Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to local governments if they have sustained an economic loss (e.g., decreased local tax revenues, increased local law enforcement costs, and increased local ordinance or code enforcement costs) as a result of the presence of the nuisance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 60.05, 823.05, and 893.138.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Perry

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A bill to be entitled

An act relating to public nuisances; amending s. 60.05, F.S.; revising notice requirements for the filing of temporary injunctions relating to the enjoinder of certain nuisances; extending the period of notice before a lien may attach to certain real estate; amending s. 823.05, F.S.; making technical changes; declaring that the use of a location by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity is a public nuisance; declaring that any place or premises that has been used on more than two occasions during a certain period as the site of specified violations is a nuisance and may be abated or enjoined pursuant to specified provisions; providing a property owner an opportunity to remedy a nuisance before specified legal actions may be taken against the property under certain circumstances; amending s. 893.138, F.S.; declaring that any place or premises that has been used on more than two occasions during a certain period as the site of any combination of specified violations is a nuisance and may be abated pursuant to specified procedures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 60.05, Florida Statutes, is amended to read:
60.05 Abatement of nuisances.—

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(1) When any nuisance as defined in s. 823.05 exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

(2) The court may allow a temporary injunction without bond on proper proof being made. If it appears by evidence or affidavit that a temporary injunction should be issued ~~issue~~, the court, pending the determination on final hearing, may enjoin any of the following:

(a) The maintaining of a nuisance.~~;~~

(b) The operating and maintaining of the place or premises where the nuisance is maintained.~~;~~

(c) The owner or agent of the building or ground upon which the nuisance exists.~~;~~

(d) The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.

The injunction shall specify the activities enjoined and may ~~shall~~ not preclude the operation of any lawful business not conducive to the maintenance of the nuisance complained of. ~~At least 3 days' notice in writing shall be given defendant of the time and place of application for the temporary injunction.~~

(3) (a) The defendant shall be given written notice to abate the nuisance within 10 days after the issuance of the notice. The notice must inform the defendant that an application for

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59 temporary injunction may be filed if the nuisance is not timely
 60 abated. If the nuisance is not timely abated, the defendant must
 61 be given a second written notice that informs the defendant that
 62 an application for a temporary injunction will be filed if the
 63 nuisance is not abated within 15 days after the end of the
 64 initial 10-day period. This notice also must provide the
 65 location where the application will be filed and the time when
 66 it will be filed. If the nuisance is not timely abated as
 67 provided in the second notice, the application for the temporary
 68 injunction must be filed as indicated in the notice.

69 (b) In addition to the information required under paragraph

70 (a), each notice must:

71 1. If applicable, describe the building, booth, tent, or
 72 place that is declared a nuisance;

73 2. State the activities that led to the nuisance being
 74 declared;

75 3. State the actions necessary to abate the nuisance; and

76 4. State that costs will be assessed if abatement of the
 77 nuisance is not completed and if the court determines that the
 78 nuisance exists.

79 (c) The notices provided in this subsection must be sent by
 80 personal service to the owner at his or her address as it
 81 appears on the latest tax assessment roll or to the tenant of
 82 such address. If an address is not found for the owner, the
 83 notices must be sent to the location of the declared nuisance
 84 and displayed prominently and conspicuously at that location.

85 (d) If a nuisance presents a danger of immediate and
 86 irreparable injury to a person or to the safety of a community,
 87 the notice requirements under paragraph (a) are waived, and only

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88 one notice is required, which must inform the defendant that the
 89 application for a temporary injunction will be filed if the
 90 nuisance is not abated within a designated timeframe of between
 91 24 and 72 hours. The notice also must identify the location
 92 where the application will be filed and the time when it will be
 93 filed.

94 (4)(3) Evidence of the general reputation of the alleged
 95 nuisance and place is admissible to prove the existence of the
 96 nuisance. An ~~Ne~~ action filed by a citizen may not shall be
 97 dismissed unless the court is satisfied that it should be
 98 dismissed. Otherwise the action shall continue and the state
 99 attorney notified to proceed with it. If the action is brought
 100 by a citizen and the court finds that there was no reasonable
 101 ground for the action, the costs shall be taxed against the
 102 citizen.

103 (5)(4) On trial if the existence of a nuisance is shown,
 104 the court shall issue a permanent injunction and order the costs
 105 to be paid by the persons establishing or maintaining the
 106 nuisance and shall adjudge that the costs are a lien on all
 107 personal property found in the place of the nuisance and on the
 108 failure of the property to bring enough to pay the costs, then
 109 on the real estate occupied by the nuisance. A ~~Ne~~ lien may not
 110 ~~shall~~ attach to the real estate of any other than such said
 111 persons unless 15 5 days' written notice has been given to the
 112 owner or his or her agent who fails to begin to abate the
 113 nuisance within the 15-day period said 5 days. In a proceeding
 114 abating a nuisance pursuant to s. 823.10 or s. 823.05, if a
 115 tenant has been convicted of an offense under chapter 893 or s.
 116 796.07, the court may order the tenant to vacate the property

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117 within 72 hours if the tenant and owner of the premises are
 118 parties to the nuisance abatement action and the order will lead
 119 to the abatement of the nuisance.

120 ~~(6)~~(5) If the action was brought by the Attorney General, a
 121 state attorney, or any other officer or agency of state
 122 government; if the court finds either before or after trial that
 123 there was no reasonable ground for the action; and if judgment
 124 is rendered for the defendant, the costs and reasonable attorney
 125 ~~attorney's~~ fees shall be taxed against the state.

126 Section 2. Section 823.05, Florida Statutes, is amended to
 127 read:

128 823.05 Places and groups engaged in certain activities
 129 ~~criminal gang related activity~~ declared a nuisance; abatement
 130 and enjoinder ~~massage establishments engaged in prohibited~~
 131 ~~activity; may be abated and enjoined.-~~

132 (1) A person who erects, establishes, continues, maintains,
 133 owns, or leases any of the following is deemed to be maintaining
 134 a nuisance, and the building, erection, place, tent, or booth,
 135 and the furniture, fixtures, and contents of such structure, are
 136 declared a nuisance, and all such places or persons shall be
 137 abated or enjoined as provided in ss. 60.05 and 60.06:

138 ~~(a) A~~ Whoever shall erect, establish, continue, or
 139 ~~maintain, own or lease any~~ building, booth, tent, or place that
 140 ~~which~~ tends to annoy the community or injure the health of the
 141 community, or becomes ~~become~~ manifestly injurious to the morals
 142 or manners of the people as provided ~~described~~ in s. 823.01, ~~or~~

143 ~~(b) A~~ any house or place of prostitution, assignation, or
 144 lewdness, ~~or~~

145 ~~(c) A~~ place or building in which persons engage in where

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146 games of chance ~~are engaged~~ in violation of law. ~~or~~

147 ~~(d) A~~ any place where any law of the state is violated,
 148 ~~shall be deemed guilty of maintaining a nuisance, and the~~
 149 ~~building, erection, place, tent or booth and the furniture,~~
 150 ~~fixtures, and contents are declared a nuisance. All such places~~
 151 ~~or persons shall be abated or enjoined as provided in ss. 60.05~~
 152 ~~and 60.06.~~

153 (2) (a) As used in this subsection, the terms "criminal
 154 gang," "criminal gang member," "criminal gang associate," and
 155 "criminal gang-related activity" have the same meanings as
 156 provided in s. 874.03.

157 (b) A criminal gang, criminal gang member, or criminal gang
 158 associate who engages in the commission of criminal gang-related
 159 activity is a public nuisance. ~~Any and~~ All such persons shall be
 160 abated or enjoined as provided in ss. 60.05 and 60.06.

161 (c) The use of a location ~~on two or more occasions~~ by a
 162 criminal gang, criminal gang members, or criminal gang
 163 associates for the purpose of engaging in criminal gang-related
 164 activity is a public nuisance. Such use of a location as a
 165 public nuisance shall be abated or enjoined as provided in ss.
 166 60.05 and 60.06.

167 ~~(d) Nothing in~~ This subsection does not shall prevent a
 168 local governing body from adopting and enforcing laws consistent
 169 with this chapter relating to criminal gangs and gang violence.
 170 Where local laws duplicate or supplement this chapter, this
 171 chapter shall be construed as providing alternative remedies and
 172 not as preempting the field.

173 (e) The state, through the Department of Legal Affairs or
 174 any state attorney, or any of the state's agencies,

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175 instrumentalities, subdivisions, or municipalities having
 176 jurisdiction over conduct in violation of a provision of this
 177 chapter may institute civil proceedings under this subsection.
 178 In any action brought under this subsection, the circuit court
 179 shall proceed as soon as practicable to the hearing and
 180 determination. Pending final determination, the circuit court
 181 may at any time enter such injunctions, prohibitions, or
 182 restraining orders, or take such actions, including the
 183 acceptance of satisfactory performance bonds, as the court may
 184 deem proper.

185 (3) A massage establishment as defined in s. 480.033(7)
 186 which that operates in violation of s. 480.0475 or s.
 187 480.0535(2) is declared a nuisance and may be abated or enjoined
 188 as provided in ss. 60.05 and 60.06.

189 (4) (a) Any place or premises that has been used on more
 190 than two occasions within a 6-month period as the site of any of
 191 the following violations is declared a nuisance and may be
 192 abated or enjoined as provided in ss. 60.05 and 60.06:

193 1. Section 812.019, relating to dealing in stolen property.

194 2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
 195 relating to assault and battery.

196 3. Section 810.02, relating to burglary.

197 4. Section 812.014, relating to theft.

198 5. Section 812.131, relating to robbery by sudden
 199 snatching.

200 (b) Notwithstanding any other law, a rental property that
 201 is declared a nuisance under this subsection may not be abated
 202 or subject to forfeiture under the Florida Contraband Forfeiture
 203 Act if the nuisance was committed by someone other than the

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204 owner of the property and the property owner commences
 205 rehabilitation of the property within 30 days after the property
 206 is declared a nuisance and completes the rehabilitation within a
 207 reasonable time thereafter.

208 Section 3. Section 893.138, Florida Statutes, is amended to
 209 read:

210 893.138 Local administrative action to abate certain
 211 activities declared ~~drug-related, prostitution-related, or~~
 212 ~~stolen-property-related~~ public nuisances and ~~criminal gang~~
 213 ~~activity.~~-

214 (1) It is the intent of this section to promote, protect,
 215 and improve the health, safety, and welfare of the citizens of
 216 the counties and municipalities of this state by authorizing the
 217 creation of administrative boards with authority to impose
 218 administrative fines and other noncriminal penalties in order to
 219 provide an equitable, expeditious, effective, and inexpensive
 220 method of enforcing ordinances in counties and municipalities
 221 under circumstances when a pending or repeated violation
 222 continues to exist.

223 (2) Any place or premises that has been used:

224 (a) On more than two occasions within a 6-month period, as
 225 the site of a violation of s. 796.07;

226 (b) On more than two occasions within a 6-month period, as
 227 the site of the unlawful sale, delivery, manufacture, or
 228 cultivation of any controlled substance;

229 (c) On one occasion as the site of the unlawful possession
 230 of a controlled substance, where such possession constitutes a
 231 felony and that has been previously used on more than one
 232 occasion as the site of the unlawful sale, delivery,

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233 manufacture, or cultivation of any controlled substance;
 234 (d) By a criminal gang for the purpose of conducting
 235 criminal gang activity as defined by s. 874.03;
 236 (e) On more than two occasions within a 6-month period, as
 237 the site of a violation of s. 812.019 relating to dealing in
 238 stolen property; ~~or~~
 239 (f) On two or more occasions within a 6-month period, as
 240 the site of a violation of chapter 499; ~~or~~
 241 (g) On more than two occasions within a 6-month period, as
 242 the site of a violation of any combination of the following:
 243 1. Section 782.04, relating to murder;
 244 2. Section 782.051, relating to attempted felony murder;
 245 3. Section 784.045(1)(a)2., relating to aggravated battery
 246 with a deadly weapon; or
 247 4. Section 784.021(1)(a), relating to aggravated assault
 248 with a deadly weapon without intent to kill,
 249
 250 may be declared to be a public nuisance, and such nuisance may
 251 be abated pursuant to the procedures provided in this section.
 252 (3) Any pain-management clinic, as described in s. 458.3265
 253 or s. 459.0137, which has been used on more than two occasions
 254 within a 6-month period as the site of a violation of:
 255 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
 256 relating to assault and battery;
 257 (b) Section 810.02, relating to burglary;
 258 (c) Section 812.014, relating to theft;
 259 (d) Section 812.131, relating to robbery by sudden
 260 snatching; or
 261 (e) Section 893.13, relating to the unlawful distribution

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262 of controlled substances,
 263
 264 may be declared to be a public nuisance, and such nuisance may
 265 be abated pursuant to the procedures provided in this section.
 266 (4) Any county or municipality may, by ordinance, create an
 267 administrative board to hear complaints regarding the nuisances
 268 described in subsection (2). Any employee, officer, or resident
 269 of the county or municipality may bring a complaint before the
 270 board after giving not less than 3 days' written notice of such
 271 complaint to the owner of the place or premises at his or her
 272 last known address. After a hearing in which the board may
 273 consider any evidence, including evidence of the general
 274 reputation of the place or premises, and at which the owner of
 275 the premises shall have an opportunity to present evidence in
 276 his or her defense, the board may declare the place or premises
 277 to be a public nuisance as described in subsection (2).
 278 (5) If the board declares a place or premises to be a
 279 public nuisance, it may enter an order requiring the owner of
 280 such place or premises to adopt such procedure as may be
 281 appropriate under the circumstances to abate any such nuisance
 282 or it may enter an order immediately prohibiting:
 283 (a) The maintaining of the nuisance;
 284 (b) The operating or maintaining of the place or premises,
 285 including the closure of the place or premises or any part
 286 thereof; or
 287 (c) The conduct, operation, or maintenance of any business
 288 or activity on the premises which is conducive to such nuisance.
 289 (6) An order entered under subsection (5) shall expire
 290 after 1 year or at such earlier time as is stated in the order.

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291 (7) An order entered under subsection (5) may be enforced
 292 pursuant to the procedures contained in s. 120.69. This
 293 subsection does not subject a municipality that creates a board
 294 under this section, or the board so created, to any other
 295 provision of chapter 120.

296 (8) The board may bring a complaint under s. 60.05 seeking
 297 temporary and permanent injunctive relief against any nuisance
 298 described in subsection (2).

299 (9) This section does not restrict the right of any person
 300 to proceed under s. 60.05 against any public nuisance.

301 (10) As used in this section, the term "controlled
 302 substance" includes any substance sold in lieu of a controlled
 303 substance in violation of s. 817.563 or any imitation controlled
 304 substance defined in s. 817.564.

305 (11) The provisions of this section may be supplemented by
 306 a county or municipal ordinance. The ordinance may include, but
 307 is not limited to, provisions that establish additional
 308 penalties for public nuisances, including fines not to exceed
 309 \$250 per day; provide for the payment of reasonable costs,
 310 including reasonable attorney fees associated with
 311 investigations of and hearings on public nuisances; provide for
 312 continuing jurisdiction for a period of 1 year over any place or
 313 premises that has been or is declared to be a public nuisance;
 314 establish penalties, including fines not to exceed \$500 per day
 315 for recurring public nuisances; provide for the recording of
 316 orders on public nuisances so that notice must be given to
 317 subsequent purchasers, successors in interest, or assigns of the
 318 real property that is the subject of the order; provide that
 319 recorded orders on public nuisances may become liens against the

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320 real property that is the subject of the order; and provide for
 321 the foreclosure of property subject to a lien and the recovery
 322 of all costs, including reasonable attorney fees, associated
 323 with the recording of orders and foreclosure. No lien created
 324 pursuant to the provisions of this section may be foreclosed on
 325 real property which is a homestead under s. 4, Art. X of the
 326 State Constitution. Where a local government seeks to bring an
 327 administrative action, based on a stolen property nuisance,
 328 against a property owner operating an establishment where
 329 multiple tenants, on one site, conduct their own retail
 330 business, the property owner shall not be subject to a lien
 331 against his or her property or the prohibition of operation
 332 provision if the property owner evicts the business declared to
 333 be a nuisance within 90 days after notification by registered
 334 mail to the property owner of a second stolen property
 335 conviction of the tenant. The total fines imposed pursuant to
 336 the authority of this section shall not exceed \$15,000. Nothing
 337 contained within this section prohibits a county or municipality
 338 from proceeding against a public nuisance by any other means.

339 Section 4. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01-14-20

Meeting Date

SB 888

Bill Number (if applicable)

Topic PUBLIC NUISANCES

Amendment Barcode (if applicable)

Name MATT BUTLER

Job Title CAPTAIN

Address 2500 W. COLONIAL DR.
Street

Phone 321-229-9064

ORLANDO, FL 32804
City State Zip

Email MATT.BUTLER@OCFL.NET

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Criminal Justice

BILL: CS/SB 1056

INTRODUCER: Criminal Justice Committee and Senator Simpson

SUBJECT: PACE Center for Girls

DATE: January 15, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1056 creates s. 985.175, F.S., which authorizes the Department of Juvenile Justice (DJJ) to contract with PACE Center for Girls, to provide services including, but not limited to, education, counseling, training, and advocacy as an alternative to commitment and institutionalization of girls and young women. Contracts under this section must be authorized by and consistent with funding appropriated in the General Appropriations Act and be in accordance with s. 985.644, F.S.

This bill is effective July 1, 2020.

II. Present Situation:

The PACE Center for Girls (PACE) is a 501(c)3 non-profit organization whose mission is to provide girls and young women an opportunity for a better future through education, counseling, training, and advocacy. PACE has 21 centers in Florida, which serve over 3,000 girls and young women per year. PACE is recognized as a national model for reducing recidivism and improving school success, employment, and self-sufficiency among girls by multiple agencies, including the National Council on Crime and Delinquency, and the Office of Juvenile Justice and Delinquency Prevention.¹

The DJJ currently contracts with the PACE for the following services:

- Community-based, gender-specific prevention and intervention services;

¹ *About Us*, Pace Center for Girls, available at <https://www.pacecenter.org/about-us> (last accessed January 6, 2020).

- Case management; non-clinical/clinical therapy;
- Transition planning; referral services; career exploration; Girls Circle (trauma management and behavioral management); and
- The REACH Program (which is a diversion program that includes case management, biopsychosocial assessment, group therapy, non-clinical mentoring/skills building, and parent/youth engagement activities).²

DJJ Contracting Powers

Section 985.644, F.S., authorizes the DJJ to contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations to carry out its purpose and responsibilities.³

Entities that enter into contracts with the DJJ must ensure that its owners, operators, and personnel who have direct contact with children are subject to background screening.⁴ All employees of the DJJ and personnel of contract providers for any program for children, including all owners, operators, employees, persons who have access to confidential juvenile records, and volunteers, must complete:

- A level 2 employment screening.
- A national criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person's employment.⁵

Additionally this section provides what action the DJJ must take if there are policy changes that affect a contracted entity. The DJJ must provide notice of policy changes that affect contracted delinquency services and programs. This procedure must include:

- Public notice of policy development.
- Opportunity for public comment on the proposed policy.
- Assessment for fiscal impact upon the DJJ and providers.
- The DJJ's response to comments received.⁶

General Appropriations

Florida is constitutionally required to balance its budget each fiscal year.⁷ Florida's fiscal year runs from July 1st to June 30th. The State budget is grouped into three categories of funding:

- General Revenue Funds;
- State trust funds; and
- Federal funds.

² Department of Juvenile Justice, *2020 Agency Analysis of SB 1056* (December 20, 2019). On file with the Senate Committee on Criminal Justice.

³ Section 985.644(a), F.S.

⁴ Section 985.644(b), F.S.

⁵ Section 985.644(3)(a), F.S.

⁶ Section 985.644(2), F.S.

⁷ FLA. CONST., art. III, s. 19(a).

The Governor is required to present his or her budget recommendations to the Legislature 30 days prior to the start of a Legislative Session.⁸ During the Legislative Session, both the House and Senate work to pass their own appropriations bills within their respective chambers. The General Appropriations Act is the most well-known and establishes the funding sources, specific uses of funds, as well as the spending authority.

The 2019-20 General Appropriations Act appropriated \$2,500,00 for nonrecurring funding and \$21,319,808 in recurring funding for PACE services.⁹

III. Effect of Proposed Changes:

This bill creates s. 985.175, F.S., which authorizes the Department of Juvenile Justice (DJJ) to contract with PACE Center for Girls, to provide services including, but not limited to, education, counseling, training, and advocacy as an alternative to commitment and institutionalization of girls and young women. Contracts under this section must be authorized by and consistent with funding appropriated in the General Appropriations Act and be in accordance with s. 985.644, F.S.

This bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

⁸ Section 216.162, F.S.

⁹ Chapter 2019-115, L.O.F.

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:

None.

VIII. Statutes Affected:

This bill creates section 985.175 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 January 14, 2020:**

The committee substitute specifies that the contracts with PACE are in accordance with s. 985.644, F.S. The committee substitute adds the language “including, but not limited to,” to ensure that contracts with PACE are not limited to the services listed in the bill.

B. Amendments:

None.



569194

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Simpson) recommended the following:

Senate Amendment

Delete lines 14 - 18
and insert:
Appropriations Act, the department may contract, in accordance with s. 985.644, with the PACE Center for Girls, a nonprofit organization exempt from taxation pursuant to s. 501(c)(3) of the Internal Revenue Code, to provide alternatives to institutionalization or commitment for girls and young women through services including, but not limited to, education,



569194

11 counseling, training,

By Senator Simpson

10-00939A-20

20201056__

1 A bill to be entitled
2 An act relating to the PACE Center for Girls; creating
3 s. 985.175, F.S.; authorizing the Department of
4 Juvenile Justice to contract with the PACE Center for
5 Girls for specified services; providing an effective
6 date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 985.175, Florida Statutes, is created to
11 read:

12 985.175 The PACE Center for Girls.-As authorized by and
13 consistent with funding appropriated in the General
14 Appropriations Act, the department may contract with the PACE
15 Center for Girls, a nonprofit organization exempt from taxation
16 pursuant to s. 501(c)(3) of the Internal Revenue Code, to
17 provide alternatives to institutionalization or commitment for
18 girls and young women through education, counseling, training,
19 and advocacy.

20 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.14.19 Meeting Date

SB 1056 Bill Number (if applicable)

Topic SB 1056 Pace Center For Girls

Amendment Barcode (if applicable)

Name Gail Armstrong

Job Title Pace Executive Director Hernando + Pasco

Address 7545 Little Rd

Phone 727-207-6580

New Port Richey FL 34654

Email gail.armstrong@pacecenter.org

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Pace Center for Girls

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-14-19

Meeting Date

SB 1056

Bill Number (if applicable)

Topic SB 1056 Pace Center For Girls

Amendment Barcode (if applicable)

Name Mallory

Job Title Student

Address 3139 Dumont Ave.,

Street

Phone 352.533.1012

Spring Hill

FL

34609

City

State

Zip

Email n/a

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Pace Center For Girls

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



The Florida Senate

Committee Agenda Request

To: Senator Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 16, 2019

I respectfully request that **Senate Bill 1056**, relating to PACE center for girls, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Wilton Simpson", written over a horizontal line.

Senator Wilton Simpson
Florida Senate, District 10



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Juvenile Justice

BILL INFORMATION

BILL NUMBER:	<u>SB 1056</u>
BILL TITLE:	<u>PACE Center for Girls</u>
BILL SPONSOR:	<u>Senator Simpson</u>
EFFECTIVE DATE:	<u>July 1, 2020</u>

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Appropriations Committee
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS

BILL NUMBER:	HB 681
SPONSOR:	Representative Trumbull

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	12/20/19 – For more information please contact Legislative Affairs Director Rachel Moscoso at (850) 717-2716
LEAD AGENCY ANALYST:	Ben Hudson, Legislative Specialist
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	John Mila, Asst. General Counsel
FISCAL ANALYST:	Marti Harknes, Budget Director

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Allows the Department of Juvenile Justice to contract with the PACE Center for Girls for services.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 985.644 F.S. states the department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out its purpose and responsibilities established in statute. Every private organization that the department enters into a contract with faces a stringent review process that is both competitive and thorough.

In the FY 2019-20 General Appropriations Act, the Pace Center for Girls was appropriated \$21,319,808 in recurring funding for their programs statewide and \$2,500,000 in nonrecurring funding for Fixed Capital Outlay.

2. EFFECT OF THE BILL:

Section 1:

Subject to funding appropriated in the General Appropriations Act, the bill allows the department to contract with the PACE Center for Girls to provide alternatives to institutionalization or commitment for girls and young women through education, counseling, training, and advocacy.

Click or tap here to enter text.

Section 2:

Provides an effective date, July 1, 2020.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	Click or tap here to enter text.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Click or tap here to enter text.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.

Bill Section Number(s):	Click or tap here to enter text.
-------------------------	----------------------------------

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	Click or tap here to enter text.
-----------	----------------------------------

Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	Click or tap here to enter text.
--	----------------------------------

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.
--	----------------------------------

ADDITIONAL COMMENTS

The department's current contract with PACE incorporates more services provided than just education, counseling, training, and advocacy. Services also include community-based, gender-specific prevention and intervention services; case management; non-clinical/clinical therapy; transition planning; referral services; career exploration; Girls Circle (trauma management and behavioral management); and the REACH Program (which is a diversion program that includes case management, biopsychosocial assessment, group therapy, non-clinical mentoring/skills building, and parent/youth engagement activities). If the statutory language only names education, counseling, training and advocacy, there may be issues writing new contracts for additional services.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.
Lines 12-19:	The bill authorizes the Department to contract with PACE, but does not mention whether this exempts such a contract from competitive procurement or contract monitoring and quality improvement standards.

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 Criminal Justice

BILL: SB 1292

INTRODUCER: Senator Perry

SUBJECT: Public Records/Nonjudicial Arrest Record of a Minor

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 1292 is the public records exemption linked to SB 700. This bill provides that the nonjudicial records of arrest of minors who have successfully completed a diversion program and are eligible for expunction are made confidential and exempt from public disclosure, except that the record must be made available only to criminal justice agencies for specified purposes. SB 700 amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense. Additionally, SB 700 amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense to lawfully deny or fail to acknowledge his or her participation in the program.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect on the same date as SB 700 or similar legislation takes effect. As filed, SB 700 is effective July 1, 2020.

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

¹ FLA. CONST. art. I, s. 24(a).

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 the statutory provisions are 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., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ 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.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Juvenile Diversion Program Expunction

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed²⁷ or expunged.²⁸ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody of the record.²⁹ The following are authorized expungement processes for the criminal history record of a juvenile:

- Juvenile diversion;³⁰
- Automatic juvenile;³¹ and
- Early juvenile.³²

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ *See generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

²⁸ Section 943.053(3)(b), F.S.

²⁹ Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

³⁰ Section 943.0582, F.S.

³¹ Section 943.0515, F.S.

³² Section 943.0515(1)(b)2., F.S.

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.³³

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer that confronted the juvenile at the time of the incident or the state attorney that has been referred the case. While participation in a diversion program may be restricted to misdemeanor offenses, there are some programs that enable a juvenile who has committed a felony to participate. In FY 2018-19, there were 4,965 juveniles who were referred to post arrest diversion programs for felony offenses.³⁴

After completing an eligible diversion program, a juvenile seeking to have his or her nonjudicial arrest record expunged must :

- Submit an application for diversion expunction to the FDLE.
- Submit, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that:
 - He or she has completed the diversion program;
 - The arrest was for a misdemeanor; and
 - He or she has not otherwise been charged by the state attorney with or have been found to have committed, any criminal offense or comparable ordinance violation.
- Have not, before the application for expunction, been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.³⁵

If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.³⁶

A criminal history record that is expunged under this section is only available to criminal justice agencies for the purpose of determining eligibility for diversion programs, a criminal investigation, or making a prosecutorial decision. Records that are eligible for expunction under this section must be sealed.³⁷ A juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and the expunction of the nonjudicial arrest record, unless the inquiry is made by a criminal justice agency³⁸ for one of the purposes stated above.³⁹

³³ Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last accessed January 9, 2020).

³⁴ Florida Department of Juvenile Justice, *Delinquency Profile 2018, Statewide Diversion – Felony Arrests*, (September 13, 2019), available at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last accessed January 9, 2020).

³⁵ Section 943.0582(3), F.S.

³⁶ Section 943.0582(3), F.S.

³⁷ Section 943.0582(2)(b), F.S.

³⁸ “Criminal justice agency” means: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. Section 942.045(11), F.S.

³⁹ Section 985.126(5), F.S.

A juvenile who receives an expunction under this section is not prevented from petitioning for the expunction or sealing of a later criminal history record for human trafficking victim expunction,⁴⁰ court ordered expunction,⁴¹ or court ordered sealing,⁴² if the juvenile is otherwise eligible for relief under those sections.⁴³

III. Effect of Proposed Changes:

SB 1292 is the public records exemption linked to SB 700. This bill provides that the non-judicial records of arrest of minors who have successfully completed a diversion program and are eligible for expunction are made confidential and exempt from public disclosure, except that the record must be made available only to criminal justice agencies for specified purposes.⁴⁴

SB 700, which is linked to SB 1292, amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense, including *felony offenses*. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense, including a *felony or subsequent offense*, to lawfully deny or fail to acknowledge his or her participation in the program. This expands the current law, which only permits a juvenile who completes diversion for a *first-time misdemeanor offense* to lawfully deny or fail to acknowledge his or her participation in the program.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from the repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that the nonjudicial record of the arrest of a minor who successfully completed a diversion program for minors, which is sealed or expunged pursuant to s. 943.0582, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The purpose of diversion programs is to redirect youth from the justice system with opportunities for programming, rehabilitation, and restoration. This purpose will be undermined if the nonjudicial record of arrest is not confidential and exempt. The presence of a nonjudicial record of arrest of a minor who completed a diversion program can jeopardize his or her ability to obtain education, employment, and other opportunities necessary

⁴⁰ Section 943.0583, F.S.

⁴¹ Section 943.0585, F.S.

⁴² Section 943.059, F.S.

⁴³ Section 943.0582, F.S.

⁴⁴ Section 943.0582(2)(b), F.S., provides that the criminal history record of a person whose record is expunged pursuant to this section must be made available only to criminal justice agencies for the purpose of: determining eligibility for diversion programs; a criminal investigation; or making a prosecutorial decision under s. 985.15, F.S.

to become a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was successfully diverted from further delinquency proceedings through the completion of a diversion program. For these reasons, the Legislature finds that it is a public necessity that the criminal history records of minors which have received an expunction due to the successful completion of a diversion program be confidential and exempt from public records requirements.

This bill takes effect on the same date as SB 700 or similar legislation takes effect. As filed, SB 700 is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 newly created or expanded public records or public meeting exemption. The bill creates a public record exemption for sealed and expunged criminal records and therefore requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public exemption. The bill creates a public record exemption for a nonjudicial record of arrest of a juvenile who has successfully completed a diversion program that is sealed or expunged. Section 2. of the bill provides a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State 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 makes confidential and exempt limited types of criminal records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0582 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Perry

8-01761-20

20201292__

A bill to be entitled

An act relating to public records; amending s. 943.0582, F.S.; providing an exemption from public records requirements for a nonjudicial record of the arrest of a minor who has successfully completed a diversion program; providing for retroactive application; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 943.0582, Florida Statutes, to read:

943.0582 Diversion program expunction.—

(5) A nonjudicial record of the arrest of a minor who has successfully completed a diversion program which is sealed or expunged under this section and which is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the record may be made available to criminal justice agencies only for the purposes specified in subparagraph (2)(b)1. The exemption under this subsection applies to records held by the department before, on, or after July 1, 2020. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

8-01761-20

20201292__

Section 2. The Legislature finds that it is a public necessity that the nonjudicial record of the arrest of a minor who successfully completed a diversion program for minors, which is sealed or expunged pursuant to s. 943.0582, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The purpose of diversion programs is to redirect youth from the justice system with opportunities for programming, rehabilitation, and restoration. This purpose will be undermined if the nonjudicial record of arrest is not confidential and exempt. The presence of a nonjudicial record of arrest of a minor who completed a diversion program can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to become a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was successfully diverted from further delinquency proceedings through the completion of a diversion program. For these reasons, the Legislature finds that it is a public necessity that the criminal history records of minors which have received an expunction due to the successful completion of a diversion program be confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that SB 700 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

SB 1292

Bill Number (if applicable)

Topic Public Records/Nonjudicial Arrest Record of a Mino

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Street

Phone 850-521-3042

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

1292

Bill Number (if applicable)

Topic Public Records Exemption for Expunged Records

Amendment Barcode (if applicable)

Name Rex Dimmig

Job Title Public Defender, 10th Judicial Circuit

Address Polk County Courthouse, 255 North Broadway, 3d Floor

Phone 863-534-4200

Street

Bartow

City

Florida

State

33830

Zip

Email rdimmig@pd10.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020
Meeting Date

SB1292
Bill Number (if applicable)

Topic Public Records - Arrest Record of a Minor Amendment Barcode (if applicable)

Name Dr. Danielle Thomas

Job Title Legislation Chair

Address 1747 Orlando Central Pkwy

Phone 407 855 7604

Orlando FL 32805

City State Zip

Email legislation@floridapta.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Criminal Justice

BILL: SPB 7036

INTRODUCER: Criminal Justice Committee

SUBJECT: OGRS/Criminal Intelligence Information/Criminal Investigative Information

DATE: January 14, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones		CJ Submitted as Comm. Bill/Fav

I. Summary:

SPB 7036 amends ss. 943.0583 and 119.071, F.S., to save from repeal the current exemption from public records disclosure for certain criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking.

The original public necessity statement for the bill provides that the identity of victims of human trafficking is of a sensitive personal nature. Without this exemption, the release of identifying information may cause further trauma or cause unwarranted damage to the good name or reputation of the victim. Furthermore, victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crime. Without the public records exemption these victims face barriers to employment and other life opportunities.

Sections 943.0583 and 119.071(2)(h), F.S., relating to information regarding victims of human trafficking, is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from the repeal through reenactment by the Legislature. This bill removes this repeal language.

This bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests relating to information regarding victims of human trafficking should be offset by authorized fees. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

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 the statutory provisions are 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., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ 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.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking, ranging from young children to adults, are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There are an estimated 40.3 victims of human trafficking in the world. Of that number, an estimated 25 percent are children. Based on data in 2017, it was estimated that 1 out of 7 endangered runaways reported to the National Center for Missing and Exploited Children were likely child sex trafficking victims.²⁷

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Polaris, *Human Trafficking: The Facts*, available at <https://polarisproject.org/human-trafficking/facts> (last visited December 19, 2019).

“Human trafficking” is defined in s. 787.06(2)(d), F.S., as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person. “A victim of human trafficking” is a person subjected to coercion,²⁸ for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.²⁹

Public Records Exemption for Criminal Intelligence Information or Criminal Investigative Information Relating to Human Trafficking

Section 943.0583, F.S., allows a victim of human trafficking to petition the court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme.³⁰ The standard of proof in a petition for expungement is a preponderance of the evidence. In 2015, the Legislature made any information that reveals, or may reveal, the identity of a victim of human trafficking whose criminal history record has been expunged, confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.³¹

The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.³² The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

- Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
- Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

Section 943.0583(11), F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

²⁸ Section 787.06(2)(a), F.S., defines “coercion” as using or threatening to use physical force against any person; restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; causing or threatening to cause financial harm to any person; enticing or luring any person by fraud or deceit; or providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

²⁹ Section 943.0583(1)(c), F.S.

³⁰ Section 943.0583(3), F.S., does not allow the following offenses to be expunged: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

³¹ Section 943.0583(11), F.S.; Chapter 2015-146, L.O.F.

³² Section 943.045(16), F.S.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

[I]t is a public necessity that information in the investigative or intelligence records related to a criminal history record ordered expunged under s. 943.0583, Florida Statutes, which would or could reasonably be expected to reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under s. 943.0583, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been charged with crimes allegedly committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal charges remain on record and accessible to potential employers and others. Therefore, it is necessary that these records be made confidential and exempt in order for human trafficking victims to have the chance to rebuild their lives and reenter society.³³

Staff Surveys Regarding Exemptions Under Review

During the 2019 interim, Senate and House professional staff contacted the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), county sheriff's departments, and local police departments. An overwhelming majority of the responding agencies requested to reenact the public records exemption.

Public Records Exemption for Criminal Intelligence Information or Criminal Investigative Information that Reveals the Identity of a Child Abuse Victim or a Minor who is a Victim of Human Trafficking

Section 119.071, F.S., provides general exemptions from inspection or copying of public records. The Legislature has provided that the following information pertaining to agency investigations is exempt from public record:

- Any information that reveals the identity of the victim of the crime of child abuse, or that reveals the identify of a person under the age of 18 who is the victim of the crime of human trafficking; any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense of human trafficking; any photograph, videotape, or image of any part of the body of the victim of a sexual offense, including a sexual offense of human trafficking.³⁴

Section 119.071(2)(h), F.S., relating to information regarding victims of human trafficking, is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from the repeal through reenactment by the Legislature.

³³ Chapter 2015-146, L.O.F.

³⁴ Section 119.071(2)(h), F.S.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain criminal intelligence information or criminal investigative information that reveals the identity of a victim of the crime of human trafficking of a minor for labor or any victim of human trafficking for commercial sexual activity. The Legislature finds that it is important to strengthen the protections afforded victims of human trafficking for labor who are minors and victims of human trafficking for commercial sexual activity, regardless of age, in order to ensure their privacy and to prevent their re victimization by making such information confidential and exempt. The identity of these victims is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputation of the victims. Protecting the release of identifying information of such victims protects them from further embarrassment, harassment, or injury.³⁵

Staff Survey Regarding Exemptions Under Review

During the 2019 interim, Senate and House professional staff contacted the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), county sheriff's departments and local police departments. An overwhelming majority of the responding agencies requested to reenact the public records exemption.

Twenty-six of the agencies that provided a response to the survey regarding s. 119.071(2)(h), F.S., were in favor of reenactment. Only 3 of those responding agencies suggested reenactment with changes, and no agencies were in favor of repeal. Twenty-four of the agencies that provided a response to the survey regarding s. 943.0583(11), F.S., were in favor of reenactment. Only 1 of the responding agencies suggested reenactment with changes, and one agency suggested repeal.

III. Effect of Proposed Changes:

The bill amends ss. 943.0583 and 119.071, F.S., to save from repeal the current exemption from public records disclosure for certain criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking.

This bill deletes the scheduled repeal of the current public records exemption for criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking.

This bill is effective October 1, 2020.

³⁵ Chapter 2015-146, L.O.F.

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

None.

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 newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

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. The original public necessity statement for the bill provides that the identity of victims of human trafficking is of a sensitive personal nature. Without this exemption, the release of identifying information may cause further trauma or cause unwarranted damage to the good name or reputation of the victim. Furthermore, victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crime. Without the public records exemption these victims face barriers to employment and other life opportunities. The justification upon which the public records exemption is based remains valid. Therefore, for these reasons, the bill reenacts the public records 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 the identity of victims of human trafficking. This bill exempts only certain criminal intelligence information and criminal investigative information that reveals the identity of victims of human trafficking from the public records requirements. The exemption does not appear to 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:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests relating to information regarding victims of human trafficking should be offset by authorized fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071 and 943.0583.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Criminal Justice

591-01117-20

20207036pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 119.071 and 943.0583, F.S.; abrogating the scheduled repeals of provisions relating to specified criminal intelligence information or criminal investigative information; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (h) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the

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body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

~~4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (11) of section 943.0583, Florida Statutes, is amended to read:

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59 943.0583 Human trafficking victim expunction.-
 60 (11) (a) The following criminal intelligence information or
 61 criminal investigative information is confidential and exempt
 62 from s. 119.07(1) and s. 24(a), Art. I of the State
 63 Constitution:
 64 1. Any information that reveals the identity of a person
 65 who is a victim of human trafficking whose criminal history
 66 record has been expunged under this section.
 67 2. Any information that may reveal the identity of a person
 68 who is a victim of human trafficking whose criminal history
 69 record has been ordered expunged under this section.
 70 (b) Criminal investigative information and criminal
 71 intelligence information made confidential and exempt under this
 72 subsection may be disclosed by a law enforcement agency:
 73 1. In the furtherance of its official duties and
 74 responsibilities.
 75 2. For print, publication, or broadcast if the law
 76 enforcement agency determines that such release would assist in
 77 locating or identifying a person that the agency believes to be
 78 missing or endangered. The information provided should be
 79 limited to that needed to identify or locate the victim.
 80 3. To another governmental agency in the furtherance of its
 81 official duties and responsibilities.
 82 (c) This exemption applies to such confidential and exempt
 83 criminal intelligence information or criminal investigative
 84 information held by a law enforcement agency before, on, or
 85 after the effective date of the exemption.
 86 ~~(d) This subsection is subject to the Open Government~~
 87 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~

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88 ~~repealed on October 2, 2020, unless reviewed and saved from~~
 89 ~~repeal through reenactment by the Legislature.~~
 90 Section 3. This act shall take effect October 1, 2020.

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Section 119.071(2)(h), F.S.

Agency	Repeal, Reenact, Reenact with changes	What changes
FDLE	Reenact	None
Hendry Sheriff	Reenact	None
Okeechobee Sheriff	Reenact with changes	Wants specifics as to what constitutes personal identifying information or assests
Volusia	reenact	none
Orange Sheriff	reenact	none
DJJ	no info	no info
Franklin Sheriff	reenact	none
Highlands Sheriff	Reenact with changes	wants to include exemption and confidentiality of information associated with the names of spouses, ex spouses, children and family members or relationship to the victim
St Johns Sheriff	reenact	none
Pasco Sheriff	reenact	none
Monroe Sheriff	no info	no info
seminole sheriff	reenact	none
jacksonville sheriff	reenact	none
palm beach sheriff	reenact	none
st lucie sheriff	reenact	none
pinellas sheriff	reenact	none
auburndale PD	reenact	none
satellite beach pd	no info	no info
Polk sheriff	reenact	none
Santa Rosa Sheriff	reenact	none
alachua sheriff	reenact	none
Holly hill PD	reenact	none
Boca Raton PD	reenact with changes	time when forensic test are pending and there is possibility of addiotnal investigative work.
levy sheriff	reenact	none
Sarasota PD	reenact	none
Milton PD	no info	no info
desoto sheriff	reenact	none
Altamonte Springs PD	reenact	none
Groveland PD	no info	no info
flagler sheriff	reenact	none
Kissimee PD	reenact	none
citrus county school bo	no info	no info

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: [Linda A. Brown, Alachua County Sheriff's Office](#)

Title of person completing the questionnaire: [Records Bureau Chief](#)

Telephone number of person completing the questionnaire: [\(352\) 367-4018](#)

E-mail address of person completing the questionnaire: lbrown@acso.us

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? **All personal identifies, i.e. name race/sex, date of birth, social security number, home and work addresses, home and work phone numbers and any relationship terminology within the narrative that would identify the victim, (example - child of the suspect).**
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? **Personal identifiers, home and work information and wording indicating the relationship to the suspect.**
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **Not that I am aware.**
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **Not usually that I am aware.**
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes**
 - a. What is the approximate number of requests your agency has received for such information each year?
The Alachua County Sheriff’s Office does not track our public record requests. However, the people producing these records are quite familiar with this exemption.
 - b. Please describe the types of entities requesting such information, if available.
Attorney’s, media, family members, associated parties of the involved parties
 - c. Was the information released? If “yes,” please explain.
No, it was redacted from the reports
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: **I only know the Florida protections.**
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
119.071(2)(h),
 - c. Could the exemption under review be merged with the other exemption(s)?

I believe it is best as an individual exemption rather than part of another.

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

I don't recall any specific complaints

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.

Yes, it is good.

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? Not to my knowledge.

- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If “yes,” which agencies? Yes, the Attorney General's Victim Compensation, other local and state agencies.

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? Not sure, generally at the time a missing or endangered person is being sought, the investigation of the allegations is ongoing and not particularly relative to the recovery of the individual.

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

No

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.?

We've had an average of 16 expunge orders per month this year to date.

2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.

Not to my knowledge

3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.

An expunge order requires the destruction of the records and we do not have the means to recreate them at the local level afterwards.

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":

- a. What is the approximate number of requests your agency has received for such information each year? We do not track requests for information.
- b. Please describe the types of entities requesting such information, if available.
- c. Was the information released? If "yes," please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":

- a. Please provide the specific state or federal citation for each exemption. I am only familiar with the Florida exemptions.
- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. Florida law prohibits acknowledging the existence of expunged records.
- c. Could the exemption under review be merged with the other exemption(s)?

In my opinion, not well.

6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

No

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.

I don't believe we have tracked the future lives of the trafficking victims in our area.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?

Not that I am aware.

- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? Yes, the Attorney General's Victim Compensation, other local and state agencies.

- e. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? Not sure, generally at the time a missing or endangered person is being sought, the investigation of the allegations is ongoing and not particularly relative to the recovery of the individual.

- c. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity? No

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
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(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
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Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Lt. Paul A. Machovina

Title of person completing the questionnaire: Records Supervisor

Telephone number of person completing the questionnaire: 407-571-8249

E-mail address of person completing the questionnaire: pamachovina@altamonte.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? Names (victim, parents, grandparents, spouses, etc.), date of birth, social security numbers, driver’s license numbers, addresses, personal phone numbers, photos, videos, sketches or drawings, vehicle tag or vin#, and so on.
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? Pronouns, nicknames, friend’s names, boy/girlfriend’s names, school information, height, weight, race, gender, place of employment name, address, and phone number, etc.
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. No
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. Yes. I have heard of full, un-redacted reports being released by our Clerk of the Court’s office. However, none specifically relating to human trafficking.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: No
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? . If “yes”: Marsey’s Law, if selected by the victim
 - a. Please provide the specific state or federal citation for each exemption.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)? No, because the victim has to choose Marsey's Law.
7. Has your agency received any complaint about the public record exemption? If "yes," please explain. No.
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. Yes, by redacting the victim's information it becomes harder for the suspect or a third party to contact and harass the victim.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? No.
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? Yes, the Seminole County Sheriff's Office.
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? No, as it relates to people missing directly due to human trafficking.

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? No.

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review. None.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? One

2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. No.

3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. Yes. I have heard of full, un-redacted reports being released by our Clerk of the Court’s office. However, none specifically relating to human trafficking.

4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: No.
 - a. What is the approximate number of requests your agency has received for such information each year?

 - b. Please describe the types of entities requesting such information, if available.

 - c. Was the information released? If “yes,” please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If “yes”: Marsey’s Law, if selected by the victim.
 - a. Please provide the specific state or federal citation for each exemption.

 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

- d. Could the exemption under review be merged with the other exemption(s)? No, because the victim has to choose Marsey's Law.
6. Has your agency received any complaint about the public record exemption? If "yes," please explain. No.
 7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. Yes, I believe it has by protecting the victim's identity from harassment and ridicule.
 8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? No.
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? Yes, The Seminole County Sheriff's office.
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? Not specifically for human trafficking.

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? No.
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes
10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review. None.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: K. Andy Ray, Auburndale Police Department.

Title of person completing the questionnaire: Chief of Police

Telephone number of person completing the questionnaire: (863)837-5102

E-mail address of person completing the questionnaire: aray@auburndalefl.com

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? **That person’s name, date of birth, address, driver license number, and Social Security number, telephone number, employer, or any of that information identified to a member of the person’s family.**

2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person? **The information listed in number 1 above and that is contained within incident reports, arrest documents, field interview reports, intelligence bulletins, officer safety bulletins, and other like documents.**

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **Not to my knowledge with regard to our law enforcement agency.**

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **If some piece of information listed in the answers to questions 1 and 2 is known, then yes, there are means of obtaining the exempt information through Internet searches, court document searches, etc.**

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year? **10-20**

 - b. Please describe the types of entities requesting such information, if available. **Broadcast and print media outlets, individuals such as family members of suspects, etc.**

 - c. Was the information released? If “yes,” please explain. **No, due to the exemption.**

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? **No.** If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? **No.** If "yes," please explain.

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **Yes, we believe it has. The intent is to protect the identity of a victim of a very personal type of crime from public disclosure to provide protection from additional trauma caused by public disclosure or further victimization by the original offender or his/her friends or family.**

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **That is likely, but can't say for sure.**
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **Yes, other law enforcement agencies that could assist us in locating a missing or endangered person under these circumstances.**

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Yes, with regard to locating a person, but not the information about a listed crime that is protected.**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No.**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and

- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **None to my knowledge.**
2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **No.**
3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **No.**
4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **No.**
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": **Not to my knowledge.**
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

6. Has your agency received any complaint about the public record exemption? If "yes," please explain. **No.**

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Not to my knowledge.**

 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes
10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: [G. Matthew Immler, Esq.](#)

Title of person completing the questionnaire: [Training Administrator](#)

Telephone number of person completing the questionnaire: [561-338-1227](#)

E-mail address of person completing the questionnaire: gimmler@myboca.us

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? [Name, address, place of employment, identity of relatives, social security number, credit card number, patient ID number \(for hospitalized victims\)](#)
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? [location of the crime, and the identity of the witnesses can be identifying information depending upon the circumstances.](#)
- 3.
4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. [No.](#)
5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. [The information can be obtained from persons with direct knowledge of the crime or incident and are willing to talk or post the information on social media.](#)
6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: [Yes.](#)
 - a. What is the approximate number of requests your agency has received for such information each year? [300](#)
 - b. Please describe the types of entities requesting such information, if available. [Individual citizens, media representatives, advocacy groups of varying kinds, attorneys, insurance companies, businesses, neighborhood associations, private investigators, other law enforcement agencies and government entities.](#)
 - c. Was the information released? If “yes,” please explain. [Confidential information is never released unless the requestor is a law enforcement agency and meets the criteria of participating in the investigation. If the exemption provides for discretionary release, exempt information is occasionally released through the Public Information Office if it will assist with the identification of a criminal suspect or to locate a missing or endangered person.](#)

7. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If "yes": [Not to our knowledge.](#)
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

8. Has your agency received any complaint about the public record exemption? If "yes," please explain. [We occasionally receive inquiries as to why information will not be released. Records personnel or the Public Information office will respond with an explanation of the exemption.](#)

9. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. [No opinion as we do not have sufficient information on this issue.](#)

10. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? [Yes. See answer 6. c.](#)

 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? [Yes. Law enforcement agencies participating in an investigation, Office of the State's Attorney, Department of Children and Families.](#)

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Yes.**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No.**

11. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

12. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **Recommend that the legislature clarify that an “active investigation” includes those where forensic test results are pending and where there continues to be a possibility of additional investigative work which would include the time period between the occurrence of the crime and prosecution of the suspect(s).**

13. Please provide any additional comments regarding the public record exemption under review. **None.**

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;

- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **None.**
2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **No.**
3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **It is possible that someone with direct knowledge of the information would reveal it.**
4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **None involving F.s.s. 93.0583 expunctions.**
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.

- c. Was the information released? If “yes,” please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If “yes”: [None that we are aware of.](#)
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. [No.](#)

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. [We do not have enough information to form an opinion on this.](#)

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? [No.](#)

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which

agencies? We have not had an occasion where we were asked to share confidential human trafficking information with any agency.

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? No.
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? No opinion.
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes
10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review. None.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Larry Grant
Title of person completing the questionnaire: Police Chief
Telephone number of person completing the questionnaire: (352) 726 1931 X2308
E-mail address of person completing the questionnaire: grantl@citruschools.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

“NO”

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?

 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

10. Which of the following actions does your agency recommend the Legislature take (Please select one):
 - Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.?
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire:

Title of person completing the questionnaire:

Telephone number of person completing the questionnaire:

E-mail address of person completing the questionnaire:

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
Name, DOB, age, race, sex, scars, birthmarks, tattoos, any other identifiable information.
2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person? **Name, DOB, age, race, sex, scars, birthmarks, tattoos, any other identifiable information.**
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
No, not for this agency
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
No
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes**
 - a. What is the approximate number of requests your agency has received for such information each year? **2,080**
 - b. Please describe the types of entities requesting such information, if available.
Non-profit organizations, personal requests from civilians, and attorneys
 - c. Was the information released? If “yes,” please explain.
No
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: **Florida Constitution under Marsy’s Law protects victim rights and there is other state protection for other victim rights**
 - a. Please provide the specific state or federal citation for each exemption. **Florida Constitution Article 1 Section 16**

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **We use whichever exemption is applicable**
 - c. Could the exemption under review be merged with the other exemption(s)? **It should not be. The more exemptions, the better**
- 7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **No**
- 8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **Yes, the more exemptions would help too**
- 9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **yes**
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **Yes, other governmental agencies, normally law enforcement or DCF**
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **yes**
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **Private, non-profit organizations on behalf of the victim**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **N/A**

12. Please provide any additional comments regarding the public record exemption under review. **The more exemptions, the better**

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. "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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **3**

2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. **no**

3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. **Maybe, possibly through the clerk of courts**

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": **yes**
 - a. What is the approximate number of requests your agency has received for such information each year? **2,080**
 - b. Please describe the types of entities requesting such information, if available. **Non-profits, civilians, attorneys**
 - c. Was the information released? If "yes," please explain. **No**

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": **yes**
 - a. Please provide the specific state or federal citation for each exemption. **Florida Constitution Article 1 Section 16**

d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **Yes, other government agencies, law enforcement, DCF**

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **N/A**

11. Please provide any additional comments regarding the public record exemption under review. **More exemptions, the better**

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Brian Berkowitz

Title of person completing the questionnaire: General Counsel

Telephone number of person completing the questionnaire: (850) 717-2458

E-mail address of person completing the questionnaire: brian.berkowitz@djj.state.fl.us

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts.

Our agency does not collect or possess any criminal intelligence or criminal investigative information related to human trafficking.

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
10. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is

Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.?
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Kate Holmes and Jason Harrison, Florida Department of Law Enforcement

Title of person completing the questionnaire: Assistant General Counsels

Telephone number of person completing the questionnaire: 850-410-7676

E-mail address of person completing the questionnaire: kateholmes@fdle.state.fl.us and jasonharrison@fdle.state.fl.us.

Ka If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts. **Yes.**

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?

FDLE considers information that reveals the identity of a person to include the person’s name, address, phone number, email address, photographs, and video depicting the person. Also, depending on the incident and investigation, identifying the victim’s family members may also reveal the identity of a person. If this indicated in the records, FDLE will redact the names, address, phone number, email address, photographs, and video of the victim’s family members.

2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person?

Information that may reveal the identity of a person can vary depending on the specific case investigation. As described above, FDLE considers information that may reveal the identity of a person to include location information, name, photograph, video, and family member name and location information.

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

While FDLE has not been a part of any litigation under this exemption, there has been litigation over Section 119.071(2)(h), Florida Statutes in *State v. Ingram*, 170 So3d 727 (Fla. 2015). In *Ingram*, a criminal defendant serving life in prison for sexual battery of a child made a public records request to the State Attorney’s Office for a videotape of his minor victim. The 5th DCA ruled that the State had to turn over the videotape to the defendant unredacted (this was in a post-conviction setting not during criminal discovery). The 5th DCA certified the question as great public importance. At oral argument before the Supreme Court, the State represented that no video existed. As such, the Supreme Court vacated the 5th DCA’s opinion ordering the State to turn over the video and dismissed the case.

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

Depending upon what information is revealed during the course of the criminal trial, some of the information may be available. However, the information should not otherwise be readily available to a member of the general public.

5. Has your agency ever received a public records request for any confidential and exempt information? If "yes": **Yes.**

a. What is the approximate number of requests your agency has received for such information each year? **FDLE receives approximately 4,000 public records requests each year. The records requested can vary to an officer's Global Profile Sheet, laboratory records, and complete investigative files. Each of these requests could contain confidential and exempt information including victim information and also social security numbers.**

b. Please describe the types of entities requesting such information, if available. **FDLE receives requests from a variety of entities including criminal defense attorneys, civil attorneys, media outlets, and citizens.**

c. Was the information released? If "yes," please explain.

Depending upon who is asking for the confidential information there has been certain circumstances where FDLE has released confidential information. If the confidential exemption allows for release to surviving spouse, adult child, or parent, FDLE has released the confidential information to the designated surviving relative.

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If "yes":

a. Please provide the specific state or federal citation for each exemption. **Article I, Section 16(b), Florida Constitution, also known as Marsy's Law. Depending upon the agency interpretation of Marsy's Law, release of this information may be prohibited not only under the current exemption but also under the Constitutional amendment.**

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Currently, FDLE relies on the exemption in s. 119.071(2)(h), F.S. when responding to public records requests for information pertaining to victims of sexual crimes, child abuse, or human trafficking. Depending on the status of an investigation, FDLE may also apply the active criminal investigative information exemption. However, this exemption is no longer applicable once the information has been turned over to defense in discovery. Therefore, it is important to have the 119.071(2)(h) exemption in order to protect the identity of certain victims.**

c. Could the exemption under review be merged with the other exemption(s)? **Because of the nature of the crimes that these people are victims of, it is important to keep the exemption separate of other exemptions. Potentially, there is an argument that Marsy's Law protects all victim information. However, without any definite or fixed opinion as to the application of Marsy's Law, it is FDLE's view**

that this particular exemption should continue in order to protect the identity of victims of sexual crimes, child abuse, and human trafficking.

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

Yes. FDLE will frequently receive complaints on records that we have released because we have redacted the victim’s information. We cite to the statute that makes this information confidential and explain that we cannot release the information. Once this discussion is had, the requester will understand and not further any complaint.

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **FDLE does not release the victim information to a requester. If this helps the victim overcome the trauma and prevent revictimization then the exemption has met its purpose. However, FDLE cannot comment as to whether or not the exemption has prevented revictimization because we do not know how the victim feels or if the victim is experiencing any further trauma from his/her human trafficking.**

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Yes.**
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **Yes. It depends upon the nature of the case and the governmental agency asking for the information. Entities that information may be released to include other law enforcement agencies, State Attorney’s Offices, and the U.S. Department of Justice.**

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Yes. Amber alerts are utilized.**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796,

chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **According to FDLE’s records, there have been fifty-nine (59) people who have met the criteria to have his/her record expunged under this provision.**

2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
No.

3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
No, not to my knowledge.

4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year? **FDLE receives approximately 4,000 public records requests each year. The records requested can vary to an officer’s Global Profile Sheet, laboratory records, and complete investigative files. Each of these requests could contain confidential and exempt information including victim information and also social security numbers.**

opportunity to rebuild their lives and reenter society, because we do not know how the victim is currently doing in terms of their lives and reintegration into society.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Unknown.**
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **Yes, FDLE will share information with other governmental agencies in furtherance of its official duties. It is unknown if FDLE has released information specifically pertaining to this provision. However, the typical agencies FDLE will share information with are local law enforcement agencies, State Attorney's Offices, and federal criminal justice partners.**
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **If a person meets the criteria for issuing an Amber Alert, an Amber Alert (or Silver Alert) will be published by the department. It is unknown whether or not any of these persons are victims of human trafficking.**
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

9. Which of the following actions does your agency recommend the Legislature take
(Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Wendee Hartman

Title of person completing the questionnaire: Records Supervisor

Telephone number of person completing the questionnaire: 386-586-4816

E-mail address of person completing the questionnaire: whartman@flaglersheriff.com

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? **Name, address, phone, email, business address, photos, relatives living at the same location**
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? **Relatives residing at same address with same phone number**
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **No, but I recall one media outlet demanding the age and sex and race of a child. I don’t recall if admin gave in or not. This was a couple years back.**
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **We have no control over the victim releasing it**
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **All the time**
 - a. What is the approximate number of requests your agency has received for such information each year? **Guessing a hundred or so**
 - b. Please describe the types of entities requesting such information, if available. **Attorneys mostly- lots of custody battles, divorces, civil disputes, also neighbors who see police in the neighborhood**
 - c. Was the information released? If “yes,” please explain. **If they are not a party involved, it is heavily redacted**
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
119.071(2 C 1- active investigation
 - a. Please provide the specific state or federal citation for each exemption. **119.071 2 c 1- active investigation is often used in conjunction with the other if it applies**

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

If case is active and/or victim is exempt under one of the above- the report is heavily redacted

c. Could the exemption under review be merged with the other exemption(s)?

It is fine as it is

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

I believe most understand the need to protect a victim under such circumstance

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. Yes. I believe more could be done- such as the details as to what was done to the victim. I don't imagine as a victim, reading about it or hearing about it on the news helps them to heal

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? Yes

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If “yes,” which agencies? Yes, other LEO, school, DCF

c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? Usually a press release is done instead of releasing the report- that would be heavily redacted

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **None that comes to mind**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.?

None that I am aware of

2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. No

3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. Clerk of Court and LEO exemptions should mirror each other

4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: We haven’t dealt with human trafficking yet

- a. What is the approximate number of requests your agency has received for such information each year?

- b. Please describe the types of entities requesting such information, if available.

- c. Was the information released? If “yes,” please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If “yes”:

- a. Please provide the specific state or federal citation for each exemption.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If “yes,” please explain.
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.

Although we haven't dealt with human trafficking yet, it appears to be a good exemption

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If “yes,” which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes
10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Deborah Dempsey- Franklin County Sheriff's Office

Title of person completing the questionnaire: Executive Assistant

Telephone number of person completing the questionnaire: 850-670-8519

E-mail address of person completing the questionnaire: d.dempsey@franklinsheriff.com

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms "criminal intelligence information" and "criminal investigative information." "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. "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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
10. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.?
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: [Cmdr. Ron Curtis](#)

Title of person completing the questionnaire: [Administrative Bureau Commander](#)

Telephone number of person completing the questionnaire: [352-345-1395](#)

E-mail address of person completing the questionnaire: ronald.curtis@groveland-fl.gov

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. [The GPD does not collect or possess any of the categories related to human trafficking and has not worked any confirmed human trafficking cases.](#) If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?

 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

10. Which of the following actions does your agency recommend the Legislature take (Please select one):
 - Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.?
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Susan Harrelle

Title of person completing the questionnaire: Capt. Community Services

Telephone number of person completing the questionnaire: 863-674-5600

E-mail address of person completing the questionnaire: sharrelle@hendrysheriff.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? *Name, dob, body part, relationship(s) to victim, DNA/Lab Test, tattoos, piercings, scars, marks, information or data from technology, etc.*
2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person? *Please see above.*
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. *No*
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. *I don't believe so. Not thru this Sheriff's Office*
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: *No*
 - a. What is the approximate number of requests your agency has received for such information each year? *N/A*
 - b. Please describe the types of entities requesting such information, if available. *N/A*
 - c. Was the information released? If “yes,” please explain. *N/A*
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: *Possibly, we generally only deal with instate request.*
7.
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)? *Possibly, but the statute speaks directly to these victims.*

8. Has your agency received any complaint about the public record exemption? If “yes,” please explain. *No*
9. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. *Absolutely! While we have not yet experienced this in the case of Human Trafficking, we have with sex cases. While it also protects the integrity of the case – it does offer protection to the victims.*
10. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? *No*
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? *Yes. SAO, DCF, Clerk of the Court, etc. Occasionally other law enforcement agencies if they are working a case with the same victim.*
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? *Yes*
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? *No*
11. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

12. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). *N/A*

13. Please provide any additional comments regarding the public record exemption under review. *N/A*

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? *Uncertain – but believe it to be a very low number if any.*
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. *No*
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. *Not thru this Sheriff's Office*
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": *No*
 - a. What is the approximate number of requests your agency has received for such information each year? *N/A*
 - b. Please describe the types of entities requesting such information, if available. *N/A*
 - c. Was the information released? If "yes," please explain. *N/A*
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": *Not certain*
 - a. Please provide the specific state or federal citation for each exemption. *N/A*
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. *N/A*
 - c. Could the exemption under review be merged with the other exemption(s)? *N/A*

6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. *No*
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
Most certainly.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? *Yes*
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? *Yes*
- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? *Yes, but only information that will assist in locating the missing or endangered person.*
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? *No*
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
- Reenact the public records exemption as is***
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). *N/A*

11. Please provide any additional comments regarding the public record exemption under review. *N/A*

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire:

Liz Peralta, Highlands County Sheriff's Office

Title of person completing the questionnaire: Records Management Director

Telephone number of person completing the questionnaire: (863) 402-7232

E-mail address of person completing the questionnaire: lperalta@highlandssheriff.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms "criminal intelligence information" and "criminal investigative information." "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. "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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?

Name, date of birth, Driver License Number, home, work, church, school addresses, home, work, and cell phone numbers, social media accounts, email address, photographs/Face, audio communications.

2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person?

The names of spouses, children, and family members or relationships.

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No.

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **Yes.**

During Discovery in Criminal Judicial Proceedings of a defendant by the State Attorney’s office.

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes**

- a. What is the approximate number of requests your agency has received for such information each year? **Two**

- b. Please describe the types of entities requesting such information, if available. **Media Outlets.**

- c. Was the information released? If “yes,” please explain. **No.**

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: **N/A**

- a. Please provide the specific state or federal citation for each exemption.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

- c. Could the exemption under review be merged with the other exemption(s)?
7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **No**
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **Yes**
By specifying the authorized entities which victim information can be disclosed to averts certain acts of harassment, bullying and/or embarrassment for the victims.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Yes, to the SAO.**
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **State Attorney’s Office**
- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **No.**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No.**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

Please include the exemption and confidentiality of information associated with the names of spouses, ex-spouses, children, and family members or relationship of the victim.

12. Please provide any additional comments regarding the public record exemption under review. **N/A**

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. "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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **None.**

2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. **No.**

3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. **Unknown**

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": **N/A**
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": **Unknown**
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **N/A**
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. **N/A**
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **No.**
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **N/A**
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **No.**
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No.**

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **N/A**

11. Please provide any additional comments regarding the public record exemption under review. **N/A**

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Stephen K. Aldrich
Title of person completing the questionnaire: Chief of Police
Telephone number of person completing the questionnaire: 386-248-9494
E-mail address of person completing the questionnaire: saldrich@hollyhillfl.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? - Personal Identification information would include, name, address, date of birth, phone number, and Social Security Number.
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? – Same as listed in question #1.
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. – No.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. – Confidentially held information cannot be readily obtained without some piece of the held information.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: - Yes, by News Reports that are requesting copies of arrest reports. They are very understanding that the victim information in confidential.
 - a. What is the approximate number of requests your agency has received for such information each year? - 25 times (approximately)
 - b. Please describe the types of entities requesting such information, if available. – News Reporters
 - c. Was the information released? If “yes,” please explain. - No
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption. - Unknown
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)? - unknown

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. - No.

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. – Yes. I reduces the likelihood of the victim becoming known.

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? – Yes, with other law enforcement agencies and the Prosecutor’s Office.

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? – Yes, please see prior question.

 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? – We would if needed, but I don’t recall any circumstances at this time.

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? – No.

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? – Very few.
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. – No.
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. – No.
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": - Not that I recall.
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption. – Unknown.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)? – Unknown.

6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. – No.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. – Prevent other people from victimizing a person that they only know through researching their background.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? – Yes, to other Law Enforcement agencies or Prosecutor’s office.

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? – Yes.

 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? – No.

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? – No.

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Andrea M. Smith

Title of person completing the questionnaire: Assistant Chief

Telephone number of person completing the questionnaire: 904-630-2187

E-mail address of person completing the questionnaire: Andrea.Smith@jaxsheriff.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
Photograph, name, home address
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
Home address, photograph, name
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
No
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
It is a possibility. Our department cannot control what is released by other agencies, such as the Clerk of the Court or State Attorney’s Office
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year? Hundreds.
 - b. Please describe the types of entities requesting such information, if available.
Media, attorneys, other law enforcement agencies, private citizens
 - c. Was the information released? If “yes,” please explain.
No. We do not release confidential information.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption. Marsy’s Law
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
“There are no records responsive to your request” if the entire document is not releasable. However, if there are only specific parts of a record that need to be

redacted, the statute used for the exemption is embedded in the redacted parts of the report.

- c. Could the exemption under review be merged with the other exemption(s)?
Human Trafficking is not always a sex related crime. It is also often a slavery/forced labor crime. It probably should stand alone.
7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.
Not that I am aware of.
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. Yes
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? I think so, yes. However, I do not think we disclosed the victim’s information; only the arrested person’s information and nature of the crime.
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? Yes: The State Attorney’s Office, other law enforcement agencies if warranted, DCF
- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? Yes

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? *As long as the information shared is for legitimate law enforcement purposes, we should be able to share it with any agency that is assisting us (like DCF, Medical Examiner, etc)*

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? Are you asking a total number since the department has been around or a particular year? We routinely get expungement orders (several per week).
2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. Not that I know of
3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. I wouldn’t think so. Expunged records would eliminate any copies of a criminal history on file, and the investigative or intelligence information is already confidential under the other statute.
4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: If this is referring ONLY to this particular statute, I do not think we have ever been asked for a criminal history for a human trafficking victim.
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)? I think it could be merged with the other statute that makes the information on the identity of a human trafficking victim confidential and exempt.
6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. [No](#)
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. [I hope so.](#)
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? [Not regarding the expungement issue.](#)
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? [Yes, see response to the same question above.](#)

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? [Yes](#)

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? [Yes, see answer to same question above](#)
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- [Repeal](#) the public records exemption
 - [Reenact](#) the public records exemption as is
 - [Reenact the public records exemption with changes](#)
10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). [Merge it with the other statute that covers the confidentiality of human trafficking victims](#)
11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

- b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
 4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.
- (b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:
1. In the furtherance of its official duties and responsibilities.
 2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
 3. To another governmental agency in the furtherance of its official duties and responsibilities.
- (c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
- (d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Jeffrey Tambasco, Kissimmee PD

Title of person completing the questionnaire: Captain

Telephone number of person completing the questionnaire: 407-847-0176 x3226

E-mail address of person completing the questionnaire: jtambasc@kissimmee.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?

Name, date of birth, address, social security information.

2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?

Name, identifying relationships with others involved in the investigation.

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No.

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

Potentially if other entities (Corrections, other law enforcement agencies, the State Attorney’s Office, and the Clerk’s Office) do not properly redact the information.

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:

Yes.

- a. What is the approximate number of requests your agency has received for such information each year?

5.

- b. Please describe the types of entities requesting such information, if available.

Media.

- c. Was the information released? If “yes,” please explain.

No.

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If "yes":

a. Please provide the specific state or federal citation for each exemption.

Unknown.

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

Rely on the statute provided above.

c. Could the exemption under review be merged with the other exemption(s)?

Unknown.

7. Has your agency received any complaint about the public record exemption? If "yes," please explain.

No.

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.

Yes, however, the victims would be better protected if the entire report was exempt instead of only exempting identifying information. This would prevent information that may identify the individual but does not meet the statutory requirements from being released to the general public.

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?

Yes.

- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

Yes.

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

Yes.

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

Other law enforcement agencies.

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

11. If you selected the "reenact the public records exemption with changes" option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.?

Unknown.

2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No.

3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

Potentially if other entities (Corrections, other law enforcement agencies, the State Attorney's Office, and the Clerk's Office) do not properly redact the information.

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":

No.

- a. What is the approximate number of requests your agency has received for such information each year?

3.

- b. Please describe the types of entities requesting such information, if available.

Media.

- c. Was the information released? If "yes," please explain.

No.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":

- a. Please provide the specific state or federal citation for each exemption.

N/A.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

Florida State Statute 119.

- c. Could the exemption under review be merged with the other exemption(s)?

No.

6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

No.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.

Yes.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?

Yes.

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

Other law enforcement agencies.

c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

Yes.

d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

Other law enforcement agencies.

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.
 - (b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:
 1. In the furtherance of its official duties and responsibilities.
 2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
 3. To another governmental agency in the furtherance of its official duties and responsibilities.
 - (c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
 - (d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: W. O. Beauchamp, III

Title of person completing the questionnaire: Undersheriff

Telephone number of person completing the questionnaire: 352-486-5111

E-mail address of person completing the questionnaire: bbeauchamp@levyso.com

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? Personal identifiers, photographs, audio recordings, and social media and phone records

2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? Family member names, addresses, school attended, phone number

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. No

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. No

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year? 5

 - b. Please describe the types of entities requesting such information, if available. Unknown. Not available

 - c. Was the information released? If “yes,” please explain. No

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: No
 - a. Please provide the specific state or federal citation for each exemption.

 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. No

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. Unable to advise. We recommend keeping the exemption based on the general need of all crime victims for privacy and protection

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? No

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? DCF, other law enforcement agencies

 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? Not that we recall

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? Local School Board

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? 20
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. No
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. No
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": Yes
 - a. What is the approximate number of requests your agency has received for such information each year? 5
 - b. Please describe the types of entities requesting such information, if available. Occasionally local media. Otherwise unknown
 - c. Was the information released? If "yes," please explain. No
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": No
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. No

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. No opinion

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? No

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? DCF and fellow law enforcement agencies

 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? No

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? Local school board

9. Which of the following actions does your agency recommend the Legislature take
(Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Capt. Mike Cline, Milton Police Department

Title of person completing the questionnaire: Captain

Telephone number of person completing the questionnaire: 850-983-5423

E-mail address of person completing the questionnaire: mcline@miltonfl.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
10. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.?
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Brittany Brown Monroe County Sheriff's Office

Title of person completing the questionnaire: Records Supervisor

Telephone number of person completing the questionnaire: (305)292-7050

E-mail address of person completing the questionnaire: BBrown@keysso.net

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

Answer – No

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms "criminal intelligence information" and "criminal investigative information." "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. "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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
10. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.?
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
10/8/2019**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: ERIC TILL

Title of person completing the questionnaire: RECORDS SUPERVISOR

Telephone number of person completing the questionnaire: 863-763-3117

E-mail address of person completing the questionnaire: ETILL@OKEESHERIFF.COM

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? **THE PERSON'S FULL NAME**

2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person? **DATE OF BIRTH, HOME ADDRESS, TELEPHONE NUMBER, SOCIAL SECURITY NUMBER, AND DRIVER'S LICENSE NUMBER**

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **NOT THAT I AM AWARE OF.**

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **NO**

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
YES
 - a. What is the approximate number of requests your agency has received for such information each year? **LESS THAN 10 PER YEAR.**

 - b. Please describe the types of entities requesting such information, if available. **INSURANCE COMPANIES AND PERSONS ATTEMPTING TO PICK UP REPORTS ON ANOTHER'S BEHALF.**

 - c. Was the information released? If “yes,” please explain. **INSURANCE COMPANIES WERE NOT PROVIDED ANYTHING WITHOUT CONSENT FROM THE INSURED PERSON THEY REPRESENT AND THE PERSON PICKING UP REPORTS FOR ANOTHER RECEIVED THE REPORTS WITH NECESSARY REDACTIONS TO THE INFORMATION.**

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption. **AMENDMENT 6, MARSY'S LAW - PROTECTS VICTIM'S INFORMATION**

 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **119 ALLOWS FOR THE RELEASE OF EXEMPT INFORMATION TO OTHER LAW ENF. AGENCIES**

 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **NO**
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **UNABLE TO ADVISE.**
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **YES**
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **YES. OTHER LAW ENFORCEMENT AGENCIES, ICE, FDLE, DEPT OF CHILD. AND FAM., CHILDREN'S HOME SOCIETY, ETC.**
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **NO**
10. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **MORE SPECIFICS AS TO WHAT SHOULD BE DEEMED AS PERSONAL IDENTIFYING INFORMATION OR ASSESTS. I BELIEVE THE WAY IT IS WORDED NOW LEAVES IT OPEN TO INTERPRETATION.**
12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **UNABLE TO ADVISE. STATUES ON ORDER VARY.**
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. **NO**
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. **NO**
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": **NO**
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": **UNKNOWN**
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain. **NO**

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
UNABLE TO ADVISE.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **N/A**

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **N/A**

c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **N/A**

d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?
YES, OTHER LAW ENFORCEMENT AGENCIES.

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records. —

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction. —

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
10/8/2019**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: DAVID PORTER, ORANGE COUNTY SHERIFF'S OFFICE

Title of person completing the questionnaire: ASSISTANT GENERAL COUNSEL

Telephone number of person completing the questionnaire: (407) 254-7170

E-mail address of person completing the questionnaire: DAVID.PORTER@OCFL.NET

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? NAME, PHOTOGRAPH, SOCIAL SECURITY NUMBER

2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? HOME ADDRESS, PHOTOGRAPH, VIDEO RECORDING, RELATIVES, ETC. ANY ITEM THAT COULD REASONABLY LEAD TO IDENTIFYING THE PERSON

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. NO

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. COURT ORDER

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: YES
 - a. What is the approximate number of requests your agency has received for such information each year? UNKNOWN

 - b. Please describe the types of entities requesting such information, if available. LAW FIRMS, THE PUBLIC, VICTIM SERVICE CENTER, VICTIMS

 - c. Was the information released? If “yes,” please explain. ONLY IF THE REQUESTER WAS OTHERWISE ENTITLED TO RECEIVE IT

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: YES
 - a. Please provide the specific state or federal citation for each exemption. §39.202,FLA.STAT.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. ALL THAT MAY APPLY
 - c. Could the exemption under review be merged with the other exemption(s)? NO
7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. NO
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. YES, IN A LIMITED FASHION.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? YES
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? YES, STATE ATTORNEY’S OFFICE AND OTHER LAW ENFORCEMENT AGENCIES
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? NO
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? NO

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). N/A

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. "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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? 3

2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. NO

3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. COURT ORDER

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": NO, NOT AS TO THE EXPUNGED CASES
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": YES
 - a. Please provide the specific state or federal citation for each exemption. 119.071
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. NO
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. YES
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? NO
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? IF REQUESTED AND OTHERWISE ENTITLED WE WOULD
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? NO
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? NO

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). N/A

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Christine Cunningham, Palm Beach County Sheriff's Office

Title of person completing the questionnaire: Division Manager of Central Records

Telephone number of person completing the questionnaire: 561-688-3151

E-mail address of person completing the questionnaire: cunninghamc@pbso.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms "criminal intelligence information" and "criminal investigative information." "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. "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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? **Name, Date of Birth, Social Security #, Home/work address**
2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person? **Any familial relationship between the victim and another individual named in the report.**
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **No.**
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **Possibly by court order, subpoena, or in criminal discovery**
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year? **We do not keep statistics specific to this question, however, Palm Beach County Sheriff's Office receives approximately 48,000 public records requests annually.**
 - b. Please describe the types of entities requesting such information, if available. **Citizens, attorney, government and law enforcement.**
 - c. Was the information released? If “yes,” please explain. **Yes, information shared with other law enforcement agencies and also possibly through “Discovery Requests”**
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Section 119.071(2)(h), F.S.**
 - c. Could the exemption under review be merged with the other exemption(s)? **Unsure**
7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **Not aware of any.**
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **Not that we are aware of at this time.**
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Yes**
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **Yes, Law Enforcement.**
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Yes, information released but unsure at the time if they were victims of human trafficking.**

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **Not that we are aware of at this time.**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **We do not keep statistics specific to this question, however the Palm Beach County Sheriff’s Office has expunged approximately 4,380 since mid-2011.**

2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **No**

3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **No**

4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year? **Yes, however we do not maintain statistical information specific to this request.**

 - b. Please describe the types of entities requesting such information, if available. **Citizens, attorneys, government and law enforcement.**

 - c. Was the information released? If “yes,” please explain. **Yes, to law enforcement.**

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
- Please provide the specific state or federal citation for each exemption.
 - Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Section 119.071(2)(h), F.S.**
 - Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain. **Not aware of any.**
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. **Unsure at this time.**
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Yes**
 - Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **Other law enforcement agencies**

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Yes, for a missing or endangered person.**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No.**
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes
10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing

or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Lindsay Moore

Title of person completing the questionnaire: Bureau Chief, Management Services/General Counsel

Telephone number of person completing the questionnaire: (727) 844-7701

E-mail address of person completing the questionnaire: lmoore@pascosheriff.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? **Yes** If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?

Name, address, telephone number(s), email address, place of employment (if applicable), relationship to other named individuals (for example, [victim]’s father [name]), name of school (if applicable), photographs, voice recording (if applicable). Other information may be considered to “reveal the identity” of a person depending on the circumstances.

2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person?

See above response to #1

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

Not to my knowledge; would require a court order.

5. Has your agency ever received a public records request for any confidential and exempt information? **Yes** If “yes”:

- a. What is the approximate number of requests your agency has received for such information each year? **We receive hundreds of public records requests each year; it is unknown how many fall under the above-referenced exemptions.**

- b. Please describe the types of entities requesting such information, if available.

General public, criminal defense attorneys, civil attorneys, family members, victims, witnesses, insurance companies

- c. Was the information released? If “yes,” please explain.

Confidential and exempt information is not released by our agency in the absence of a court order.

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: **Some of the information may be protected by other Florida Public Records statutes (for example, social security numbers; certain categories of**

exempt personnel; additionally, Marsy's Law (Florida Constitution Article I, Section 16) protects victim information.

- a. Please provide the specific state or federal citation for each exemption.
See above.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
Our agency cites all relevant exemptions in public records responses.
 - c. Could the exemption under review be merged with the other exemption(s)?
Unknown, but not likely.
7. Has your agency received any complaint about the public record exemption? If "yes," please explain.
Not to my knowledge.
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.
Unknown.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
Yes
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
Yes; other law enforcement, state, and local agencies.

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

Yes

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

None known at this time.

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

N/A

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and

- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.?

Unknown

2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No

3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

Not to my knowledge; would require a court order.

4. Has your agency ever received a public records request for any confidential and exempt information? **Not tracked by agency for this type of information** If “yes”:

- a. What is the approximate number of requests your agency has received for such information each year? **Unknown.**

- b. Please describe the types of entities requesting such information, if available.

Unknown

- c. Was the information released? If “yes,” please explain.

Confidential and exempt information is not released by our agency in the absence of a court order.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? **See response to Section I, #6 above** If “yes”:

- a. Please provide the specific state or federal citation for each exemption.

See above response.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
Our agency cites all relevant exemptions in public records responses.
- c. Could the exemption under review be merged with the other exemption(s)?
Unknown, but not likely.
6. Has your agency received any complaint about the public record exemption? If “yes,” please explain.
Not to my knowledge.
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
Unknown.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
Yes
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
Yes
- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
Yes
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
Unknown at this time.
9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

N/A

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Elizabeth Brady

Title of person completing the questionnaire: Sergeant

Telephone number of person completing the questionnaire: (727)582-5729

E-mail address of person completing the questionnaire: ebrady@pcsonet.com

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?

Name, date of birth, address, phone number; any information that could be used to identify a person would be redacted.

2. What categories of information does your agency consider to be an “information that may reveal the identity” of a person?

Name, date of birth, address, phone number; any information that could be used to identify a person would be redacted; to include parent/guardian, school, and/or work.

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No.

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

The information may be obtained via Subpoena or at the request of the victim; the victim must provide identification to obtain the report.

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes.**

- a. What is the approximate number of requests your agency has received for such information each year?

We received five requests that mention “trafficking” from November 2017 through October 2019.

- b. Please describe the types of entities requesting such information, if available.

Attorneys, media, and citizens (Victims, witnesses, suspects.)

- c. Was the information released? If “yes,” please explain.

If information was identified as confidential or exempt it would not have been released; unless at the direction of a subpoena or to the victim with proper identification.

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If "yes":

a. Please provide the specific state or federal citation for each exemption.

Amendment 6, Marsy's Law: Fla. Const. Art. 1, sec.16.

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

F.S.S. 119.071(2) (c) (1) Criminal Intelligence (Active) and F.S.S. 119.071(2) (c) (1) Criminal Investigative

c. Could the exemption under review be merged with the other exemption(s)?
No.

7. Has your agency received any complaint about the public record exemption? If "yes," please explain.

No complaints received.

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.

We do not have a specific example to refer to; however, the exemption would assist in protecting victim's information to reduce trauma related to the incident.

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?

Yes.

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

Yes; local, state, and federal agencies would be assisted.

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

Yes, when necessary for helping the victim and identifying the suspect.

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

No.

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

N/A

12. Please provide any additional comments regarding the public record exemption under review.

N/A

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and

- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.?

PCSO has an average of 400-500 sealed/expunged court orders received annually. However, we do not track the specific number of sealed versus the number of expunged court orders.

2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No litigation, no complaints have been received in relation to this specific exemption.

3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

No, expunged records are completely eliminated from the system. We would only be able to provide sealed records at the direction of a subpoena.

4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **We have not used 943.0583(11) as an exemption.**

- A. What is the approximate number of requests your agency has received for such information each year?

- B. Please describe the types of entities requesting such information, if available.

- C. Was the information released? If “yes,” please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":

No.

- A. Please provide the specific state or federal citation for each exemption.

N/A.

- B. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

If the record was expunged it would be completely removed from the system; we would not cite any exemption as we would not know the record existed.

- C. Could the exemption under review be merged with the other exemption(s)? **No.**

6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

No complaint has been received in regards to this exemption.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.

Yes, if the crime they committed while a victim of human trafficking is not covered under another exemption this allows them another avenue to rebuild their lives and protect their information from being disclosed.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

In reference to A, B, and C listed below; we have no specific circumstance where we have applied this exemption. However, we would agree to provide the information in all examples listed below in an effort to protect the victim.

- A. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
- B. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
- C. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
- D. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

No.

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the "reenact the public records exemption with changes" option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

N/A.

11. Please provide any additional comments regarding the public record exemption under review.

None.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.

- b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
- c. To another governmental agency in the furtherance of its official duties and responsibilities.
- 3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
- 4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- 1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 - 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.
- (b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:
- 1. In the furtherance of its official duties and responsibilities.
 - 2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
 - 3. To another governmental agency in the furtherance of its official duties and responsibilities.
- (c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
- (d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Anne Gibson, Polk County Sheriff's Office

Title of person completing the questionnaire: Director, Office of Legal Affairs

Telephone number of person completing the questionnaire: 863-298-6351

E-mail address of person completing the questionnaire: agibson@polksheriff.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?

The agency believes such information includes, but is not limited to, a person’s name, home and employment address, home and employment telephone number, date of birth, spouse’s name/address/telephone number, parent or siblings name/address/telephone number, school, and/or place of worship depending on the alleged crime being investigation and other circumstances of the investigation. This is not an exhaustive list and any other category of information that could lead someone to discovery a person’s identity could be included in this category depending on the circumstances of the investigation.

2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person?

Please see the answer to question 1.

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No.

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

No.

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes.**

- a. What is the approximate number of requests your agency has received for such information each year?

The Polk County Sheriff’s Office receives numerous request for information on a daily basis. We do not track how many requests are received based on category of information requested.

- b. Please describe the types of entities requesting such information, if available.

This information has been requested by such entitles including but not limited to criminal defendants, attorneys, media, victims and their family members, and other citizens.

c. Was the information released? If “yes,” please explain.

The Polk County Sheriff’s Office does not release confidential information.

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: **Yes.**

a. Please provide the specific state or federal citation for each exemption.

§ 794.024 F.S. and Article I, Section 16 (Fla. Const.) “Marsy’s Law”. However, we recognize that due to the way Marsy’s Law is written not all agencies share our interpretation.

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

The Polk County Sheriff’s Office relies on § 119.071(2)(h) F.S. when responding to Public Records Request as that is the Statute which specifically contains the exemption from the requirements of § 119.07 F.S..

c. Could the exemption under review be merged with the other exemption(s)?

No, § 119.071(2)(h) F.S. provides the public records exemption while § 794.024 F.S. provides criminal penalties. Additionally, we cannot rely solely on Marsy’s Law until it is clarified via case law, or the Florida Legislature chooses to adopt clarifying language in the Florida Statute addressing the provisions contained in the Florida Constitution.

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

No.

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.

Yes, The Polk County Sheriff's Office believes the exemption has accomplished its purpose by providing a legal mechanism to prevent disclosure of a victim’s identifying information.

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency

in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?

The Polk County Sheriff's Office has released the information to other criminal justice agencies.

- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

The Polk County Sheriff's Office has released the information to other criminal justice agencies.

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

The Polk County Sheriff's Office has released the information in order to help locate a missing victim.

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

No.

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the "reenact the public records exemption with changes" option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.?

The Polk County Sheriff's Office does not track the number of expungements under this section.

2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.

No.

3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.

No, if a record has been expunged there would be no way to retrieve it.

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":

- a. What is the approximate number of requests your agency has received for such information each year?

The Polk County Sheriff's Office receives numerous request for information on a daily basis. We do not track how many requests are received based on category of information requested.

- b. Please describe the types of entities requesting such information, if available.

The Polk County Sheriff's Office is unaware of anyone specifically looking for this information.

- c. Was the information released? If "yes," please explain.

No.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": **Yes.**

- a. Please provide the specific state or federal citation for each exemption.

§ 943.0585 F. S. (expungements); § 119.071(2)(h) (juvenile victim of human trafficking)

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

The Polk County Sheriff's Office would cite all applicable exemptions.

- c. Could the exemption under review be merged with the other exemption(s)?

Yes.

6. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

No.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.

§ 943.0583 F.S. provides a process by which victims of human trafficking can have their criminal history records expunged. Once a criminal history record has been expunged the Polk County Sheriff's Office would be prohibited from releasing that record. Therefore the exemption contained in § 943.0583(11) F.S. does not provide any additional protection to human trafficking victims than has already been provided by the rest of the statute. Further, § 119.071(2)(h) F.S. makes the identifying information of a victim of the crime of human trafficking who is under the age of 18 confidential regardless of whether the victim has had their record expunged pursuant to § 943.0583 F.S.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?

The Polk County Sheriff's Office has released information to organizations that can provide victim services.

- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?

The Polk County Sheriff's Office would share the information with other criminal justice agencies.

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?

No.

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

No.

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.
- (b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:
1. In the furtherance of its official duties and responsibilities.
 2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
 3. To another governmental agency in the furtherance of its official duties and responsibilities.
- (c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
- (d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Julie Teichner, Santa Rosa Sheriff's Office

Title of person completing the questionnaire: Records Supervisor / Custodian

Telephone number of person completing the questionnaire: 850-983-1266

E-mail address of person completing the questionnaire: jteichner@srsos.net

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms "criminal intelligence information" and "criminal investigative information." "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. "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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?

Their name, date of birth, social security number, driver license number, SID number, FBI numbers, photographs, images, and video recordings.

2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person?

Names of relatives and relationship indicators, address of residence, personal phone numbers, school attended, and places of employment.

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **No**

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes**

- a. What is the approximate number of requests your agency has received for such information each year?

We receive over 6,000 requests for information that is confidential and exempt each year.

- b. Please describe the types of entities requesting such information, if available.

Law Enforcement Agencies, multiple other local, state, and federal governmental agencies including the US Military victim services or advocacy centers, rape crisis centers and sexual assault counselors.

- c. Was the information released? If “yes,” please explain.

Yes, if the information was required by these agencies for the performance of their official duties.

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: **No**

- a. Please provide the specific state or federal citation for each exemption.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **No**
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.
Yes, the law prevents information about the victims being released to the public so they are able to go on with their lives without having to continually relive the events. It also helps protect them from potential predators.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Yes**
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
Yes, state, local, and federal law enforcement agencies nationwide as needed, Department of Children and Families (Families First Network), and victim services centers.
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **No**

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **None**
2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **No**
3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **No**
4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes**

- a. What is the approximate number of requests your agency has received for such information each year?

We receive over 6,000 requests for information that is confidential and exempt each year.

- b. Please describe the types of entities requesting such information, if available.

Law Enforcement Agencies, multiple other local, state, and federal governmental agencies including the US Military victim services or advocacy centers, rape crisis centers and sexual assault counselors.

- c. Was the information released? If “yes,” please explain.

Yes, if the information was required by these agencies for the performance of their official duties.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If “yes”: **No**
 - a. Please provide the specific state or federal citation for each exemption.

- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **No**
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.

We have not had any victims who have been eligible for this exemption at our agency. The exemption offers human trafficking victims the potential to rebuild their lives and become re-integrated into society.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Yes**
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
Yes, state, local, and federal law enforcement agencies nationwide as needed, Department of Children and Families (Families First Network), and victim services centers.
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **No**

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No**
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes
10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.
- (b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
 2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
 3. To another governmental agency in the furtherance of its official duties and responsibilities.
- (c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
- (d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
10/9/2019**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Harley Bishop | Joe Polzak | Melanie Marken / Sarasota Police Department

Title of person completing the questionnaire: Public Records Coordinator | Assistant City Attorney | Paralegal for Assistant City Attorney

Telephone number of person completing the questionnaire: 941-263-6818 | 941-906-1199

E-mail address of person completing the questionnaire: Harley.Bishop@SarasotaFL.gov | Joe.Polzak@SarasotaFL.gov | Melanie.Marken@SarasotaFL.gov

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
Name, social security number
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
Date of Birth, Home Address, Work Address, Names of Family Members/spouse/next of kin
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
Not for this agency during the past 5 years.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
Sometimes, yes, during criminal discovery for related Defendant charges
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **YES**
 - a. What is the approximate number of requests your agency has received for such information each year? **Approximately 10 requests for the past 2 years.**
 - b. Please describe the types of entities requesting such information, if available.
Law offices, Public Defender’s Office, Private Investigator’s, Defenders themselves.
 - c. Was the information released? If “yes,” please explain.
No
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption. **State under Art. 1, Sec. 16(b), Florida Constitution (also known as Marsy's Law)**
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Both**

- c. Could the exemption under review be merged with the other exemption(s)?
Depends on the circumstance, not always
7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **No**
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **Yes, it is a step in the right direction because the helps protect the identity of victims of certain crimes.**
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Yes**
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **Sometimes. State Attorney's office.**
- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Yes.**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **Yes, other criminal justice agencies for official purposes only.**
10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **N/A**

12. Please provide any additional comments regarding the public record exemption under review. **Not applicable.**

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **23 Expungements in the past year.**
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. **Not for this agency in the past 5 years.**
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. **No**
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": **YES**
 - a. What is the approximate number of requests your agency has received for such information each year? **Approximately 300 requests for the past 3 years.**
 - b. Please describe the types of entities requesting such information, if available.
Law Offices, Public Defender's Office, Private Investigators, Defendants themselves.
 - c. Was the information released? If "yes," please explain.
NO
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
Potentially under Art. 1, Sec. 16(b), Florida Constitution (also known as Marsy's Law)
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Any and all applicable exemptions.**
 - c. Could the exemption under review be merged with the other exemption(s)? **No.**
6. Has your agency received any complaint about the public record exemption? If "yes," please explain. **No**

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. **If a criminal record was a result of actions under duress or was a result of the defendant being a victim of human trafficking, then expungement and related public records exemptions afford the individual the chance to certain opportunities (ie. careers, living arrangements, etc.) that the individual may not have been able to secure with a criminal record.**

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **No. Not regarding this situation**

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **No. Not regarding this situation**

c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **No. Not regarding this situation**

d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

Yes, other criminal justice agencies for official purposes only.

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

Repeal the public records exemption

Reenact the public records exemption as is

Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **N/A**
11. Please provide any additional comments regarding the public record exemption under review. **No additional comments.**

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Bert Berrios, Satellite Beach PD

Title of person completing the questionnaire: Operations Commander

Telephone number of person completing the questionnaire: 321.773.4400

E-mail address of person completing the questionnaire: bberrios@satellitebeach.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? **No**

If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person?
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person?
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”:
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain.
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain.
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
10. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.?
2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.
3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.
4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain.

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities?
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered?
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Mary Ann Klein

Title of person completing the questionnaire: General Counsel

Telephone number of person completing the questionnaire: (407) 665-6603

E-mail address of person completing the questionnaire: maklein@seminolesheriff.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts **YES**

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? **Name, social security number, Driver’s license number, fingerprints, OBTS number, booking number, DNA test results, photographs.**

2. What categories of information does your agency consider to be a “information that may reveal the identity” of a person? **Same as above; addresses, phone numbers, social medial accounts, the name of a parent or sibling which can be used to identify them, vehicle identification number.**

3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **None involving our office to my understanding.**

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **We do provide information to the Office of the State Attorney so this information may be accessible to a criminal defendant through the State. It is also possible that someone could obtain the information via court order.**

5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **I would assume that over the years we have had requests.**
 - a. What is the approximate number of requests your agency has received for such information each year? **We do not track public records request by type of information requested or basis for any exemption.**

 - b. Please describe the types of entities requesting such information, if available. **It could be requests from the private individuals, media and from attorneys.**

 - c. Was the information released? If “yes,” please explain. **It would be our practice not to release this information without a court order and we have not had any litigation on this matter that I am aware.**

6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If "yes": **Marcy's Law can also come into play.**
- a. Please provide the specific state or federal citation for each exemption. **Marcy's Law- FL Constitution, Article 1, §16(b); social security number F.S. 119.071(5)(a)5; Biometric information fingerprints 119.071(5)(g)1; NCIC & FCIC record information 943.053(2) & FDLE User Agreement; Open investigation 119.071(2)(c)1; 119.071(2)(h) as applicable; DPPA provisions.**
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **See above as applicable.**
 - c. Could the exemption under review be merged with the other exemption(s)? **We think it is better left as is.**
7. Has your agency received any complaint about the public record exemption? If "yes," please explain. **Not that we are aware.**
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **It would be expected that the exemption has had a positive impact upon victims.**
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Yes, we disclose to the state and other governmental agencies as permitted by law.**

- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **Yes, for example, the Office of the State Attorney, Child Protection Team, Child Protective Services, other police agencies if needed to assist on the case, the court.**
- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Yes, but on a very limited occasion when in best interests for the safety of the child.**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **Yes, the Department of Children and Families since the Seminole County Sheriff’s Office is contracted with DCF to perform child abuse protection investigations within Seminole County.**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

******* This section was somewhat unclear. I understood the situation as follows: Victim of Human Trafficking gets arrested for a criminal offense such as prostitution for example, which later leads to realization that he/she was the victim of human trafficking. Therefore, victim has his/her record expunged pursuant to 943.0583. I will refer to this person as Defendant - Victim.**

Someone else gets arrested or is being investigated for human trafficking and the Defendant victim is the listed victim or witness in the Defendant B’s investigation.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **We do not keep a record of the underlying basis for the expungement.**
2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **Not that I am aware.**

3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. **If record of the Defendant-Victim has been expunged, then the requestor of Defendant B's investigation would have to seek records through the Florida Department of Law Enforcement if the expungement was cross referenced in some way to Defendant B's investigation.**

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": **I cannot say for sure as we do not keep a record of the basis for a record request or the reason a request was denied.**
 - a. What is the approximate number of requests your agency has received for such information each year? **We do not keep a record of the underlying type of information requested or a record of the statutory basis for any denial of the record so I am unable to provide this information.**
 - b. Please describe the types of entities requesting such information, if available. **If we had any requests, it could be requests from the private individuals, media and from attorneys.**
 - c. Was the information released? If "yes," please explain. **If requested, it would not have been released as the information would have been expunged.**

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": **Marcy's Law as it pertains to the Victim of the Human Trafficking if requested.**
 - a. Please provide the specific state or federal citation for each exemption. **Florida Constitution Art. I, Section 16**
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

6. Has your agency received any complaint about the public record exemption? If "yes," please explain. **Not that we are aware.**

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
Unknown as it is unclear how precisely this interacts and unclear of the precise factual set up for the questions.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? Unknown.

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **We could possibly share with the State attorney.**

c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Not aware of any case situation where this has come up.**

d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

Repeal the public records exemption

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.
- (b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:
1. In the furtherance of its official duties and responsibilities.
 2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
 3. To another governmental agency in the furtherance of its official duties and responsibilities.
- (c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
- (d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire:

Lt Jay Lawing

St Johns County Sheriff's Office

Title of person completing the questionnaire:

Internal Affairs

Telephone number of person completing the questionnaire:

904-209-2138

E-mail address of person completing the questionnaire:

jlawing@sjso.org

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms "criminal intelligence information" and "criminal investigative information." "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. "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.

1. What categories of information does your agency consider to be "information that reveals the identity" of a person?
 - a. Name
 - b. Date of Birth
 - c. Address

2. What categories of information does your agency consider to be a "information that **may** reveal the identity" of a person?
 - a. Names of relatives
 - b. Employer/school
 - c. Specific location of crime

3. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. No

4. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.
 - a. No

5. Has your agency ever received a public records request for any confidential and exempt information? If "yes": Yes
 - a. What is the approximate number of requests your agency has received for such information each year?
80+ from both public entities and other governmental agencies.
 - b. Please describe the types of entities requesting such information, if available.
The victim/victim family, suspects family, Department of Children and Families, State Attorney's Office, FDLE, and media outlets.

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? Yes

Department of Children and Families, State Attorney's Office, FDLE, and other law enforcement agencies who may be actively involved in the investigation.

c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? Yes, Amber Alerts

d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity? No

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the "reenact the public records exemption with changes" option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.?

One person has had their record expunged using the Human trafficking guidelines,

2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. NO

3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. No

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": No
- a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": *Unknown*
- a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received any complaint about the public record exemption? If "yes," please explain. No
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
- Yes.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law

enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.

- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? No

- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? No

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? No

- d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity? No

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the "reenact the public records exemption with changes" option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
10/9/2019**

**Open Government Sunset Review Questionnaire
(Criminal Intelligence and Investigative Information related to Human Trafficking)**

PLEASE PROVIDE A RESPONSE BY OCTOBER 9, 2019, TO:

**Ryan Cox
Senate Committee on Criminal Justice
Cox.Ryan@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Bryan Beaty

Title of person completing the questionnaire: Public Information Officer

Telephone number of person completing the questionnaire: 772-462-3308

E-mail address of person completing the questionnaire: beatyb@stluciesheriff.com

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? **name, home address, employer, employer address, , phone numbers, email address and/or other Internet identifiers, Driver License number and vehicle license plate number, email address, social media screen name(s)**
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? **We do not differential between what does and what may**
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **No.**
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **Yes, through the Clerk of Courts that does not redact in accordance with 119 but according to the Rules of Judicial Administration.**
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes**
 - a. What is the approximate number of requests your agency has received for such information each year? **5-8**
 - b. Please describe the types of entities requesting such information, if available. **Media**
 - c. Was the information released? If “yes,” please explain. **No it was not released.**
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: **YES**
 - a. Please provide the specific state or federal citation for each exemption. **Marsy’s Law protects the same type of information.**
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Since Marsy’s**

Law is a broader interpretation of “victim identification” that is now the standard for information release.

- c. Could the exemption under review be merged with the other exemption(s)? **Yes, see above regarding Marsy’s Law.**

7. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **Of course, media complain about all 119 exemptions.**

8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **Absolutely.**

9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **No.**

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **No.**

 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **No.**

 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No.**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency's jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **No.**

2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations. **No.**

3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. **No.**

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes": **No.**
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If "yes," please explain.

5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If "yes": **No.**
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

6. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **No.**
7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain. **Yes.**
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **No.**
 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **No.**
 - c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **No.**
 - d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No.**

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
1/8/2020**

**Open Government Sunset Review Questionnaire
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Section 119.071(2)(h), F.S., provides a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

A related public record exemption, s. 943.0583(11), F.S., provides that the above-described criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements.

The public record exemptions stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 119.071(2)(h), F.S. and s. 943.0583(11), are appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire:

Title of person completing the questionnaire:

Telephone number of person completing the questionnaire:

E-mail address of person completing the questionnaire:

Does your agency collect or possess any of the categories of criminal intelligence or criminal investigative information related to human trafficking listed above? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. The questionnaire consists of two parts

I. Section 119.071(2)(h), F.S.

Section 119.071(2)(h), Florida Statutes, provides a public record exemption a public record exemption for the following types of criminal intelligence and criminal investigative information:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. What categories of information does your agency consider to be “information that reveals the identity” of a person? **Name, address, phone number, date of birth, Social Security number**
2. What categories of information does your agency consider to be a “information that **may** reveal the identity” of a person? **Certain familial relationship identifiers contained within a report narrative**
3. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **Unknown**
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **Yes, occasionally the arrest affidavits available via the Clerk of Courts are not redacted to the same standards our agency uses.**
5. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Yes**
 - a. What is the approximate number of requests your agency has received for such information each year? **Unknown. From news media, possibly 150+**
 - b. Please describe the types of entities requesting such information, if available. **Members of the news media and public**
 - c. Was the information released? If “yes,” please explain. **No – the records are released with confidential/exempt information redacted.**
6. Does any other state or federal law protect the information specified in s. 119.071(2)(h)? If “yes”: **Yes**
 - a. Please provide the specific state or federal citation for each exemption. **Marsy’s Law (constitutional amendment)**
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Both those contained in Ch. 119 and in the constitutional amendment known as Marsy’s Law**

c. Could the exemption under review be merged with the other exemption(s)?
Probably. Marsy's Law is in need of clarifying language/legislation

7. Has your agency received any complaint about the public record exemption? If "yes," please explain. **Not to my knowledge**
8. Does your agency think the exemption has accomplished its purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons? Please explain. **Yes, the exemption protects personally identifying information in sensitive cases for which reports are routinely requested by the news media.**
9. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
- a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? **Not recently, to my knowledge**
- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **In general, yes, with municipal PDs and other law enforcement agencies**
- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **Not recently, to my knowledge**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity? **No, N/A**

10. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

11. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

12. Please provide any additional comments regarding the public record exemption under review.

II. Section 943.0583(11), F.S.

Section 943.0583(11), F.S., provides that the following criminal intelligence and criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged is also confidential and exempt from public records requirements:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S. ; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Chapter 119, Florida Statutes, defines the terms “criminal intelligence information” and “criminal investigative information.” “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. “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.

1. Approximately how many persons under your agency’s jurisdiction have had their criminal history records expunged under 943.0583, F.S.? **Unknown**
2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **Not to my knowledge**
3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **Not to my knowledge**
4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **Not for identifying info for a victim of human trafficking, to my knowledge**
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.
 - c. Was the information released? If “yes,” please explain.
5. Does any other state or federal law protect the information specified in s. 943.0583(11), F.S.? If “yes”: **Yes**
 - a. Please provide the specific state or federal citation for each exemption. **Marsy’s Law (constitutional amendment)**
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Both those**

contained in Ch. 119 and Ch. 943 and in the constitutional amendment known as Marsy's Law

- c. Could the exemption under review be merged with the other exemption(s)?
Probably. Marsy's Law is in need of clarifying language/legislation

6. Has your agency received any complaint about the public record exemption? If "yes," please explain. Not to my knowledge

7. Does your agency think the exemption has accomplished its purpose of allowing human trafficking victims a chance to rebuild their lives and reenter society? Please explain.
Yes, the exemption provides protection for human trafficking victims whose identifying information might otherwise be released in response to a public records request.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities. Additionally, the exemption allows the information to be disclosed for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered.
 - a. Has your agency disclosed the information in furtherance of its official duties and responsibilities? Not to my knowledge

 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? In general, yes, with municipal PDs and other law enforcement agencies

- c. Has your agency disclosed the information for print, publication, or broadcast to assist in locating or identifying a person the agency believed to be missing or endangered? **No**
- d. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No, N/A**
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
- Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes
10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
 - b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
 - c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.
2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:
- a. In the furtherance of its official duties and responsibilities.
 - b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.
 - c. To another governmental agency in the furtherance of its official duties and responsibilities.
3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

943.0583 Human trafficking victim expunction.—

- (11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
 2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.
- (b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.
2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.
3. To another governmental agency in the furtherance of its official duties and responsibilities.
 - (c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.
 - (d) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

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 Criminal Justice

BILL: SPB 7032

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Body Camera Recordings Obtained by Law Enforcement Officers

DATE: January 14, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Erickson</u>	<u>Jones</u>	_____	CJ Submitted as Comm. Bill/Fav

I. Summary:

SPB 7032 saves from repeal and retains a public records exemption in s. 119.071(2)(l), F.S., regarding body camera recordings. A body camera is a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

Section 119.071(2)(l), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.

The public records exemption also specifies when a law enforcement agency may or must provide disclosure, and also provides for court-ordered disclosure and specifies grounds the court must consider in reaching its decision regarding disclosure.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill removes this repeal language.

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 newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Costs incurred by an agency in responding to public records requests for the body camera information should be offset by authorized fees. There are also costs associated with retention of

the body camera recordings for the minimum period mandated by the public record exemption. However, Florida law does not mandate that a law enforcement agency acquire and use body cameras. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

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 the statutory provisions are 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., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ 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.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

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.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Body Cameras

Florida law defines a "body camera" as a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.²⁷ Although Florida law does not require a law enforcement agency to acquire and use body cameras, it does require a law enforcement

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(2)(1)1.a. and 943.1718(1)(a), F.S.

agency²⁸ that permits its law enforcement officers²⁹ to wear body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras.
- Any limitations on which law enforcement officers are permitted to wear body cameras.
- Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.
- A provision permitting a law enforcement officer using a body camera to review the recorded footage from the body camera, upon his or her own initiative or request, before writing a report or providing a statement regarding any event arising within the scope of his or her official duties. Any such provision may not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.³⁰

Florida law also requires a law enforcement agency that permits its law enforcement officers to wear body cameras to:

- Ensure that all personnel who wear, use, maintain, or store body cameras are trained in the law enforcement agency's policies and procedures concerning them.
- Ensure that all personnel who use, maintain, store, or release audio or video data recorded by body cameras are trained in the law enforcement agency's policies and procedures pertaining to body cameras.
- Retain audio and video data recorded by body cameras in accordance with the requirements of s. 119.021, F.S. (maintenance of public records), except as otherwise provided by law.
- Perform a periodic review of actual agency body camera practices to ensure conformity with the agency's policies and procedures.³¹

According to a 2018 criminal justice agency survey by the Florida Department of Law Enforcement, one state agency, 102 municipal police agencies, 23 sheriffs' offices, one college police department, six university police departments, and one school district reported that they currently use body cameras.³²

²⁸ A "law enforcement agency" is defined in s. 943.1718(1)(b), F.S., as an agency that has a primary mission of preventing and detecting crime and enforcing the penal, criminal, traffic, and motor vehicle laws of the state and in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.

²⁹ A "law enforcement officer" is defined in s. 943.1718(1)(c), F.S., as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

³⁰ Section 943.1718(2), F.S.

³¹ Section 943.1718(3), F.S.

³² 2018 Criminal Justice Agency Profile Survey Results, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP> (last visited Dec. 19, 2019). The information, which is only available in Microsoft Excel Spreadsheet format, can be obtained by selecting the relevant law enforcement agency and then selecting "Supplemental Programs."

Body camera recordings are not subject to ch. 934, F.S. (interception of communications).³³ Therefore, a body camera recording cannot be considered an “intercept” of communications and the general prohibition in ch. 934, F.S., against interception of wire, oral, and electronic communications does not apply to such recordings.

Generally, information contained in a body camera recording is subject to public disclosure. However, as discussed below, Florida law provides that some information contained in a body camera recording is confidential and exempt from public disclosure.³⁴

Public Records Exemption for Body Camera Recordings

“Although broad disclosure policies can promote police agency transparency and accountability, some videos—especially recordings of victims or from inside people’s homes—will raise privacy concerns if they are released to the public or the news media.” “In most state public disclosure laws, exceptions are outlined that may exempt body-worn camera footage from public release.”³⁵

Like most state public disclosure laws, Florida’s public records law exempts some body camera footage from public release. Section s. 119.071(2)(1), F.S., which was created in 2015,³⁶ provides a public records exemption for a body camera recording made by a law enforcement officer³⁷ in the course of the officer performing his or her official duties and responsibilities.

Section s. 119.071(2)(1), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.³⁸

³³ Section 943.1718(4), F.S.

³⁴ Section 119.071(2)(1), F.S.

³⁵ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services, available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> (last visited on Dec. 18, 2019). See p. 17 (footnote omitted) of the report.

³⁶ Chapter 2015-41, L.O.F.

³⁷ Section 119.071(2)(1)1.b., F.S., provides that “law enforcement officer” has the same meaning as provided in s. 943.10, F.S. Section 943.10(1), F.S., defines a “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

³⁸ Section 119.071(2)(1)2.a.-c., F.S.

A law enforcement agency may disclose a body camera recording in furtherance of its official duties and responsibilities and may also disclose the recording to another governmental agency in the furtherance of its official duties and responsibilities.³⁹

A law enforcement agency must disclose a body camera recording, or a portion thereof, to:

- A person recorded by a body camera (the person receives those portions of the recording relevant to the person's presence in the recording);
- The personal representative⁴⁰ of a person recorded by a body camera (the person receives those portions of the recording relevant to the recorded person's presence in the recording);⁴¹
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording (the person receives those portions of the recording that record the interior of such a place); and
- Pursuant to a court order.⁴²

In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court must consider:

- Whether disclosure is necessary to advance a compelling interest;
- The recording contains information that is otherwise exempt or confidential and exempt under the law;
- The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- Disclosure may cause reputational harm or jeopardize the safety of a person depicted in the recording;
- Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- The recording could be redacted to protect privacy interests; and
- There is good cause to disclose all or portions of a recording.⁴³

A law enforcement agency must retain a body camera recording for at least 90 days.⁴⁴ Generally, records retained by law enforcement agencies are governed by statutes and rules promulgated by

³⁹ Section 119.071(2)(1)3.a. and b., F.S.

⁴⁰ Section 119.071(2)(1)1.c., F.S., defines a "personal representative" as a parent of, a court-appointed guardian of, an attorney of, an agent of, or a person holding a power of attorney for a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

⁴¹ This scenario would include a situation in which the person recorded was unable to give consent for some reason or was deceased.

⁴² Section 119.071(2)(1)4.a.-d., F.S.

⁴³ Section 119.071(2)(1)4.d.(I)(A)-(H), F.S. In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of hearings and an opportunity to participate. Section 119.071(2)(1)4.d.(II), F.S.

⁴⁴ Section 119.071(2)(1)5., F.S.

the Department of State, Division of Library Services.⁴⁵ Currently, public records may be destroyed in accordance with the retention schedules established by the Division of Library Services.⁴⁶ This public records exemption requires law enforcement to retain these recordings for a minimum amount of time but does not otherwise supersede the retention and destruction schedule established by the Division of Library Services.

The exemption applies retroactively. It does not supersede any other exemption existing prior to or created after the effective date of this exemption. Those portions of a body camera recording that are protected from disclosure by another exemption continue to be exempt or confidential and exempt.⁴⁷ Some of the other public records exemptions that may be relevant to a body camera recording include:

- Active criminal intelligence information and active criminal investigative information (exempt);⁴⁸
- Information revealing surveillance techniques or procedures or personnel (exempt);⁴⁹
- Information revealing the substance of a confession of a person arrested (exempt);⁵⁰
- Information revealing the identity of a confidential informant or a confidential source (exempt);⁵¹
- Criminal intelligence information or criminal investigative information that reveals the identity of the victim of the crime of child abuse or any sexual offense or a videotape or image of any part of the body of the victim of a statutorily-specified sexual offense (confidential and exempt);⁵²
- Any information in a videotaped statement of a minor who is alleged to be or who is a victim of a statutorily-specified sexual offense, which reveals that minor's identity, home, school, etc. (confidential and exempt);⁵³
- A video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence;⁵⁴ and
- Information revealing undercover personnel of any criminal justice agency (exempt).⁵⁵

The statement of public necessity for creation of the exemption provides the following reasons for creating the exemption:

- It is a public necessity that the following types of body camera recordings are made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution: recordings taken within the interior of a private residence; recordings taken

⁴⁵ Section 257.36, F.S. See *State of Florida General Records Schedule GS2 For Law Enforcement, Correctional Facilities, and District Medical Examiners*, effective Aug. 2017, available at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (last visited on Dec. 18, 2019).

⁴⁶ Section 257.36(6), F.S.

⁴⁷ Section 119.071(2)(l)7., F.S.

⁴⁸ Section 119.071(2)(c)1., F.S.

⁴⁹ Section 119.071(2)(d), F.S.

⁵⁰ Section 119.071(2)(e), F.S.

⁵¹ Section 119.071(2)(f), F.S.

⁵² Section 119.071(2)(h), F.S.

⁵³ Section 119.071(2)(j)2.a., F.S.

⁵⁴ Section 119.071(2)(p), F.S.

⁵⁵ Section 119.071(4)(c), F.S.

within the interior of a facility that offers health care, mental health care, or social services; and recordings taken in a place that a reasonable person would expect to be private.

- There is an increased prevalence of body cameras being used by law enforcement officers. Body cameras preserve information that has the potential to assist both law enforcement officers' and the public's ability to review the circumstances surrounding an event in which law enforcement intervention occurs.
- However, in certain instances, audio and video recorded by body cameras is significantly more likely to capture highly sensitive personal information than other types of law enforcement recordings or documents.
- Public disclosure of these recordings could have an undesirable chilling effect. People who know they are being recorded by a body camera may be unwilling to cooperate fully with law enforcement officers if they know that a body camera recording can be made publicly available to anyone else. People may also be less likely to call a law enforcement agency for services if their sensitive personal information or the circumstances that necessitate a law enforcement agency's involvement are subject to public dissemination as a body camera recording.
- Body camera recordings could be used for criminal purposes if they were available upon request. This exemption from public records requirements allows law enforcement officers to more effectively and efficiently administer their duties, which would otherwise be significantly impaired.
- These concerns regarding the impact of the public records requirements for body camera recordings not only necessitate the exemption of the recordings from public records requirements, but also outweigh any public benefit that may be derived from their disclosure.⁵⁶

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.⁵⁷

Staff Survey Regarding Exemption Under Review

Staff received responses from seven police departments, one university police department, and seven sheriff offices to a joint survey of the House Oversight, Transparency and Public Management Subcommittee and the Senate Committee on Criminal Justice regarding the public records exemption for body camera recordings. Twelve of the fifteen survey respondents recommended retaining the exemption in its current form. Three survey respondents recommended retaining the exemption with some modifications.⁵⁸

⁵⁶ Chapter 2015-41, sec. 2, L.O.F.

⁵⁷ Section 119.071(2)(1)8., F.S.

⁵⁸ The survey responses are on file with the Senate Committee on Criminal Justice. One survey respondent recommended clarifying application of Article I, s. 16, of the State Constitution ("Marsy's Law") to victim information contained in body camera recordings. Marsy's Law appears to impact numerous public records exemptions; therefore, any clarification of application of Marsy's Law would necessarily require addressing its application to multiple public records exemptions, not simply the public exemption regarding body camera recordings. Another survey respondent recommended exempting information in body camera recordings identifying public employees. It is unclear if this recommendation pertains to all public employees but the public records exemption regarding body camera recordings does not supersede any current public records exemption pertinent to a public employee. Section 119.071(2)(1)7., F.S. Another survey respondent recommended clarification regarding whether the public records exemption regarding body camera recordings applies to both video and

III. Effect of Proposed Changes:

The bill saves from repeal and retains a public records exemption in s. 119.071(2)(l), F.S., regarding body camera recordings.

Section 119.071(2)(l), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.

The public records exemption also specifies when a law enforcement agency may or must provide disclosure, and also provides for court-ordered disclosure and specifies grounds the court must consider in reaching its decision regarding disclosure.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill removes this repeal language.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require 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:

Voting 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 newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

audio recordings. However, the definition of “body camera” pertinent to this public records exemption states that the device includes audio and video data. Section 119.071(2)(l)1.a., F.S. Further, one of the legislative findings in the public necessity statement in support of this public records exemption is that “in certain instances, *audio and video recorded by body cameras* is significantly more likely to capture highly sensitive personal information than other types of law recordings or documents.” Chapter 2015-41, sec. 2, L.O.F. (emphasis provided by staff).

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

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 bill exempts body camera recordings in limited circumstances: the interior of a residence; the interior of a health care, mental health care, or social services facility; the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; and a place that a reasonable person would expect to be private. Because descriptions of some of these places may require interpretation by agencies having custody of the body camera recordings, specific applications of the exemption could be challenged. However, “exemptions from disclosure are to be narrowly construed,”⁵⁹ and the agency having custody of the records “bears the burden of proving its right to the claimed exemption.”⁶⁰

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 119.071(2)(1)2.c., F.S., exempts from public disclosure a body camera recording that is taken in a place that a reasonable person would expect to be private.

Article I, s. 23, of the State Constitution provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provided by law.

The Florida Supreme Court has stated that the right of privacy includes a right to “be free from uninvited observation or of interference in those aspect of [Floridians’] lives that

⁵⁹ *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004) (citations omitted), *rev. den.*, 892 So.2d 1015 (Fla. 2004).

⁶⁰ *Id.* (citation omitted).

fall within the ambit of this zone of privacy unless the intrusion is warranted by the necessity of a compelling state interest.”⁶¹ Referring to a case which predated Article I, s. 23, of the State Constitution, the Florida Supreme Court opined that the people have a fundamental right to control what they reveal about themselves and to whom they chose to reveal themselves, and noted “this power is exercised in varying degrees by differing individuals, the parameters of an individuals’ privacy can be dictated only by that individual.”⁶²

The Florida Supreme Court found that before the right of privacy attaches “a reasonable expectation of privacy must exist.”⁶³ The test for making that determination is “whether the law recognizes an individual’s legitimate expectation of privacy” in a certain type of record.⁶⁴ The Florida Supreme Court also recognizes the right to be free of observation and interference in aspects of life that fall within a “zone of privacy.”⁶⁵ In determining whether an individual has a legitimate expectation of privacy in a given case, the court must consider all of the circumstances, especially objective manifestations of that expectation.⁶⁶

Courts have used public records exemptions as guideposts of when a privacy interest exists. For example, the Florida Fourth District Court of Appeal relied on the Florida Supreme Court’s finding that financial records were private, but also observed that there was a statutory public records exemption for financial information held by a state agency, and noted that “the legislature has recognized the confidential nature of the exact type of information at issue.”⁶⁷ Likewise, the Second District Court of Appeal of Florida found that people have an expectation of privacy in their social security numbers, and as authority, noted that social security numbers were protected from disclosure by both federal and state law and by various rules of procedure.⁶⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁶¹ *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1998).

⁶² *Id.* at 151.

⁶³ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So.2d 544, 547 (Fla. 1985).

⁶⁴ *Id.*

⁶⁵ *Shaktman*, 553 So.2d at 150.

⁶⁶ *Id.* at 153. In his concurring opinion, Chief Justice Ehrlich opined that “the zone of privacy covered by article I, section 23, can be determined only by reference to the expectations of each individual, and those expectations are protected provided they are not spurious or false. A determination of whether an individual has a legitimate expectation of privacy in any given case must be made by considering all the circumstances, especially objective manifestations of that expectation; for example, in cases where disclosure of purportedly private information is sought, circumstances, such as the kind of information, where it is kept, who has access to it and under what circumstances.” *Id.*

⁶⁷ *Berkley v. Eisen*, 699 So.2d 789, 791 (Fla. 4th DCA 1997).

⁶⁸ *Thomas v. Smith*, 882 So.2d 1037, 1045 (Fla. 2d DCA 2004).

C. Government Sector Impact:

Costs incurred by an agency in responding to public records requests for the body camera information should be offset by authorized fees.⁶⁹ There are also costs associated with retention of the body camera recordings for the minimum period mandated by the public recording exemption.⁷⁰ However, Florida law does not mandate that a law enforcement agency acquire and use body cameras.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶⁹ Section 119.07(2) and (4), F.S.

⁷⁰ Several law enforcement agencies responding to the joint staff survey (see footnote 57) indicated that they retain body camera recordings for a longer period than the minimum retention period (at least 90 days) required by the public records exemption.

FOR CONSIDERATION By the Committee on Criminal Justice

591-02072-20

20207032pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for body camera recordings obtained by law enforcement officers under certain circumstances; making editorial changes; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (1) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(1)1. As used in this paragraph, the term:

a. "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

b. "Law enforcement officer" has the same meaning as provided in s. 943.10.

c. "Personal representative" means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02072-20

20207032pb

or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

- a. Is taken within the interior of a private residence;
- b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording, or a portion thereof, may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
- b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. Notwithstanding subparagraph 2., a body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
- b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02072-20

20207032pb

59 c. To a person not depicted in a body camera recording if
60 the recording depicts a place in which the person lawfully
61 resided, dwelled, or lodged at the time of the recording;
62 however, a law enforcement agency may disclose only those
63 portions that record the interior of such a place.

64 d. Pursuant to a court order.

65 (I) In addition to any other grounds the court may consider
66 in determining whether to order that a body camera recording be
67 disclosed, the court shall consider whether:

68 (A) Disclosure is necessary to advance a compelling
69 interest;

70 (B) The recording contains information that is otherwise
71 exempt or confidential and exempt under the law;

72 (C) The person requesting disclosure is seeking to obtain
73 evidence to determine legal issues in a case in which the person
74 is a party;

75 (D) Disclosure would reveal information regarding a person
76 that is of a highly sensitive personal nature;

77 (E) Disclosure may harm the reputation or jeopardize the
78 safety of a person depicted in the recording;

79 (F) Confidentiality is necessary to prevent a serious and
80 imminent threat to the fair, impartial, and orderly
81 administration of justice;

82 (G) The recording could be redacted to protect privacy
83 interests; and

84 (H) There is good cause to disclose all or portions of a
85 recording.

86 (II) In any proceeding regarding the disclosure of a body
87 camera recording, the law enforcement agency that made the

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88 recording shall be given reasonable notice of hearings and shall
89 be given an opportunity to participate.

90 5. A law enforcement agency must retain a body camera
91 recording for at least 90 days.

92 6. The exemption provided in subparagraph 2. applies
93 retroactively.

94 7. This exemption does not supersede any other public
95 records exemption that existed before or is created after the
96 effective date of this exemption. Those portions of a recording
97 which are protected from disclosure by another public records
98 exemption shall continue to be exempt or confidential and
99 exempt.

100 ~~8. This paragraph is subject to the Open Government Sunset~~
101 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
102 ~~on October 2, 2020, unless reviewed and saved from repeal~~
103 ~~through reenactment by the Legislature.~~

104 Section 2. This act shall take effect October 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20

Meeting Date

7032
~~544~~
~~846~~

Bill Number (if applicable)

Topic Court Cost.

Amendment Barcode (if applicable)

Name Greg Poveda

Job Title _____

Address 9166 Service Dr
Street

Phone _____

9166 Se Largo FL 33773
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7032

1/14/2020
Meeting Date

Bill Number (if applicable)

Topic OSR/Body camera recordings obtained by L.E. officer

Amendment Barcode (if applicable)

Name GARY W. HESTER

Job Title Government Affairs

Address P.O. BOX 14038
Street

Phone 863-287-8438

Tallahassee FL 32317
City State Zip

Email garywhester@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-14-20

Meeting Date

7032

Bill Number (if applicable)

Topic Public Records exemption

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title State Attorney - 8 CR

Address 120 W University Ave
Street

Phone 352-374-3686

Gainesville FL 32601
City State Zip

Email cervonew@sa08.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
9/10/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire:

Matt Immler – Boca Raton Police Department

Title of person completing the questionnaire:

Police Training Administrator

Telephone number of person completing the questionnaire:

561-338-1227

E-mail address of person completing the questionnaire:

gimmler@myboca.us

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it.

Yes

2. Please provide a copy of your policy and procedures regarding body cameras.
3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?

Body cameras are worn and maintained in accordance with the above attached directive. Officers designate which portions of their body camera footage have evidentiary value and that portion is “marked” as such when downloaded to the system for storage. Marked video portions are preserved until their evidentiary value is lost and can be easily retrieved for review or distribution to the State’s Attorney.

4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.

Employees issued body worn cameras operate the systems as part of their equipment in accordance with all applicable policies and procedures unless instructed otherwise by a supervisor. Employees issued body worn devices wear the systems with the Class B, bicycle and community service officer uniforms. Body worn devices are also worn when an employee dons an external vest to take police action, whether in uniform or not. Employees record all traffic stops, vehicle pursuits, emergency responses, all situations when lights and/or sirens are activated, and all contacts with citizens in the performance of official duties. Video recordings are maintained for a period of 95 days unless marked as evidence.

6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.

This agency does not have a policy integrating “Marsy’s Law” with body camera recordings. However, Article 1, Section 16 is routinely utilized to prevent disclosure of body camera footage in order to protect victims’ information as defined in the constitutional amendment.

7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings?
95 days
 - b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case?
Yes
 - c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?
All costs associated with body camera purchase, maintenance and operation have been incorporated in the departmental budget.
 - d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access?
Yes

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review?
The area within the building or structure or within the curtilage where the occupants would not reasonably expect to be seen or heard by persons outside of the property.
2. What does your agency consider to be a “place that a reasonable person would expect to be private”?

It is a case by case determination where we essentially apply the Katz two-part test to the circumstances. A. Does the person depicted in the video display a subjective

expectation of privacy given the situation and the surroundings; and B. Is that person's expectation of privacy reasonable based on the circumstances.

3. What does your agency consider to be a "facility that offers health care, mental health care, or social services"?

Any place that is routinely used or reasonably used less frequently for the delivery of behavioral health, counseling or social services by a government agency or private practitioner.

4. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.

No

5. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.

Confidential and exempt information is available outside of the public records process through subpoena by a court of competent jurisdiction or through discovery pursuant to the Florida Rules of Criminal or Civil Procedure.

6. Has your agency ever received a public records request for any confidential and exempt information? If "yes": **No**

a. What is the approximate number of requests your agency has received for such information each year?

b. Please describe the types of entities requesting such information, if available.

c. Was the information released? If "yes," please explain.

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.

None

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes":

a. Please provide the specific state or federal citation for each exemption.

None that specifically address police body cameras that we are aware of.

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

The exemption most often stated is F.s.s. 119.071(l).

c. Could the exemption under review be merged with the other exemption(s)?

F.s.s. 119.071(l)(7) specifically permits any other applicable exemption to be applied to body camera footage.

9. Has your agency received any complaint about the public record exemption? If "yes," please explain.

No

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain.

The exemptions in Chapter 119 that specifically address police body camera footage are limited and by themselves provide only minimal protection from public disclosure. However, the exemptions that apply to law enforcement records in general can be applied to body camera footage and provide an additional measure of protection.

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

a. Has your agency disclosed in furtherance of its official duties and responsibilities?

The agency routinely provides body camera footage to eligible persons and their representatives. However, we do not have specific data on how many times we have released body camera footage in that the total is included within all video based public records released.

- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

This agency routinely makes body camera footage available to the Office of the State's Attorney for Palm Beach County for prosecution and discovery purposes.

- c. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

No

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If "yes," approximately how times has your agency disclosed such information?
- b. Is there any other person with whom your agency believes it should be allowed to share the information?

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

N/A

14. Please provide any additional comments regarding the public record exemption under review.

N/A

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records. —

(l)1. As used in this paragraph, the term:

- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
 - b. “Law enforcement officer” has the same meaning as provided in s. 943.10.
 - c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.
2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:
- a. Is taken within the interior of a private residence;
 - b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
 - c. Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
 - b. To another governmental agency in the furtherance of its official duties and responsibilities.
4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:
- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
 - b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
 - c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
 - d. Pursuant to a court order.
 - (I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
 - (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
5. A law enforcement agency must retain a body camera recording for at least 90 days.
6. The exemption provided in subparagraph 2. applies retroactively.
7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire:

- [Kevin McClure – Broward Sheriff’s Office](#)

Title of person completing the questionnaire:

- [Lieutenant](#)

Telephone number of person completing the questionnaire:

- [954-831-8748](#)

E-mail address of person completing the questionnaire:

- kevin_mcclure@sheriff.org

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. –

- Yes
2. Please provide a copy of your policy and procedures regarding body cameras.
 - See Attached
 3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?
 - BSO BWC users (Deputy through Patrol Lieutenant) are required to wear the BWC while on duty (to include working special details). The camera is to be “powered on” while on duty (with a couple exceptions outlined in the policy). The camera is to be activated prior to conducting any “investigative or enforcement action” (examples also listed in policy).
 4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
 5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.
 - BSO has a contract with Axon as our BWC vendor. Our BWC recordings are uploaded daily (per policy) via Axon docks and stored in the Microsoft Azure government cloud. They are accessed via “Evidence.com”.
 6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.
 - BSO does not have a specific policy regarding the use of BWC and Marsy’s Law. BWC recordings are treated in the same manner as any other public record with respect to Marsy’s Law.
 7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings?

- BSO retains all BWC recordings in accordance with the State of Florida GS Schedules, depending on the type of case the recording is related to. The minimum retention on all BWC recordings is 90 days, but will increase from there depending on the type of case. At this time, Criminal Investigation reports with unknown suspects are kept indefinitely in the event a suspect is developed at a later date.
- b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case?
 - BSO retains all recordings in accordance with the State GS Retention schedules based on the type of case they are (felony arrest, misdemeanor arrest.....) At this time, Criminal Investigation reports with unknown suspects are kept indefinitely in the event a suspect is developed at a later date.
- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?
 - No, we have a contracted flat fee for unlimited storage.
- d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access?
 - Yes, 90 days is a very reasonable amount of time.

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review?
 - Based on this exemption, BSO considers BWC footage and audio exempt once the interior of a private residence becomes visibly identifiable on the BWC. Additionally, the audio of any conversations taking place within the interior of a private residence are redacted as well.

2. What does your agency consider to be a “place that a reasonable person would expect to be private”?
 - BSO’s interpretation of a “place that a reasonable person would expect to be private” are those places obviously considered to be private (restrooms, private residences, etc...) in addition to measures taken by the parties to engage a BSO Deputy in a private conversation.
 - Examples:
 - If Deputies intentionally separate parties, take parties in to a separate room, or take other measures to have a private, one on one, conversation that a reasonable person would believe are private, those conversations are redacted based on this exemption.

3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”?
 - BSO follows the statutory definitions of these facilities. There have not been issues of concern as those names are sufficient to describe what these locations are.

4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
 - No

5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
 - The information may be disclosed in the process of civil or criminal litigation.

6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: total BWC requests 1351
 - a. What is the approximate number of requests your agency has received for such information each year?
 - Between 7/31/18-8/1/19, BSO received approximately 1,351 requests for BWC footage;
 - All of those 1,351 requests, required review for exempt information to determine if able to be released. The requestor was provided an estimate and asked to authorize payment for the review and possible redaction.

- Once the cost was authorized by the requestor, the videos were reviewed for exempt material and redacted.
 - During this time frame, 451 of those 1,351 requests did contain exempt content that required manual redaction prior to release.
- b. Please describe the types of entities requesting such information, if available.
- Most requests come from private attorneys, insurance companies, media, and general public.
- c. Was the information released? If “yes,” please explain.
- The information is released on a case by case basis depending on several factors to include:
 - If there is a criminal case pending;
 - If discovery has taken place;
 - If the requestor is entitled to the footage based on statute;
 - If the requestor approves the fee for review and redaction;
 - Or other factors defined by statute
7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.
- We have processed 1 court order for confidential / exempt information in the last 12 months.
8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If “yes”:
- No, not to our knowledge
- a. Please provide the specific state or federal citation for each exemption.
- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
- c. Could the exemption under review be merged with the other exemption(s)?
- No
9. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

- We receive complaints mostly from attorneys (trying to get records prior to discovery) and the media (who are looking for footage to air with their stories). Neither of these outweigh the need for the current exemption and the protections it provides.
10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain.
- Absolutely, this exemption allows both the public and law enforcement the security and transparency of having a BWC recording of the incident while at the same time protecting the individual privacy in a possibly traumatic event. If released, especially to the media, the public could be exposed to personally embarrassing or sensitive private issues.
11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.
- a. Has your agency disclosed in furtherance of its official duties and responsibilities? **Yes**
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **Yes**
 - Other municipal police departments
 - FDLE
 - DEA
 - DHS
 - FBI
 - c. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity? **No**

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information? **Yes. We do verify the person we are releasing to meets this criteria when necessary. However, we do not currently track that status to be able to give a specific number in response to this question.**
- Is there any other person with whom your agency believes it should be allowed to share the information? **No**

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is**
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

14. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
- b. “Law enforcement officer” has the same meaning as provided in s. 943.10.
- c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

- a. Is taken within the interior of a private residence;
- b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
- b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person’s presence in the recording;
- b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person’s presence in the recording;
- c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.

- d. Pursuant to a court order.
 - (I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
 - (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
- 5. A law enforcement agency must retain a body camera recording for at least 90 days.
- 6. The exemption provided in subparagraph 2. applies retroactively.
- 7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
- 8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

**Name of person and agency completing the questionnaire: Chipley Police Department
Title of person completing the questionnaire: Chief Scott Thompson
Telephone number of person completing the questionnaire: 850-638-6310
E-mail address of person completing the questionnaire: sthompson@cityofchipley.com**

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it.

YES

2. Please provide a copy of your policy and procedures regarding body cameras.

3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera? Officers are directed to utilize body cameras any time they are in contact with the public, responding to calls, traffic stops, or conducting enforcement actions.
4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
Yes
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer. At the end of Officers weekly assigned shifts and/or prior to their days off cameras are submitted to the Patrol Supervisor and are downloaded for storage purposes
6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.
No, all public records request are provided with redactions made according to Ch. 119, F.S.
7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings? 90 days/ unless needed for training or evidence purposes
 - b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case? Yes
 - c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?
No
 - d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access? Yes

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review? The inside of a residence, depicting interior portions of the house taken from inside the residence or facility.
2. What does your agency consider to be a “place that a reasonable person would expect to be private”? Residence, hospital rooms behind closed doors etc.
3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”? hospitals, mental health facilities, social service facilities
4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
no
5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
no
6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: no
 - a. What is the approximate number of requests your agency has received for such information each year?
 - b. Please describe the types of entities requesting such information, if available.

c. Was the information released? If "yes," please explain.

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.

None

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes": *no*

a. Please provide the specific state or federal citation for each exemption.

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

c. Could the exemption under review be merged with the other exemption(s)?

9. Has your agency received any complaint about the public record exemption? If "yes," please explain.

no

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain.

yes

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

a. Has your agency disclosed in furtherance of its official duties and responsibilities?

no

- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?
Yes, for prosecution purposes
- c. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity? no

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If "yes," approximately how times has your agency disclosed such information? no
- b. Is there any other person with whom your agency believes it should be allowed to share the information? no

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the "reenact the public records exemption with changes" option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

14. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
 - b. “Law enforcement officer” has the same meaning as provided in s. 943.10.
 - c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.
2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:
- a. Is taken within the interior of a private residence;
 - b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
 - c. Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:
- a. In furtherance of its official duties and responsibilities; or
 - b. To another governmental agency in the furtherance of its official duties and responsibilities.
4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
- b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
- c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
- d. Pursuant to a court order.
 - (I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
 - (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
5. A law enforcement agency must retain a body camera recording for at least 90 days.
6. The exemption provided in subparagraph 2. applies retroactively.
7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

**Name of person and agency completing the questionnaire: Michael Fowler
Title of person completing the questionnaire: Captain
Telephone number of person completing the questionnaire: 386-763-7586
E-mail address of person completing the questionnaire: mfowler@cityofdb.org**

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. **Yes**

2. Please provide a copy of your policy and procedures regarding body cameras.

3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?

Officers are equipped with body-worn and 2 in-car cameras that work in conjunction with one another. Officers are required to capture any contacts associated with their official duties.

4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,

5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.
The videos are stored on the cameras and then automatically uploaded to a cloud-based server.

6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim. **Body-cameras are not specifically addressed, however per policy, without a signed release from a victim, no information that could lead to the identification of said victim may be released.**

7. The exemption requires agencies to retain a body camera recording for at least 90 days.

- a. How long does your agency keep such recordings?

NAME	RETENTION DURATION	CATEGORY RESTRICTIONS
Uncategorized	5 years	None
A. Non-Criminal Incident	5 years	None
B. Criminal Incident	Until manually deleted	None
C. Test or Accidental	180 days	None
D. THI	Until manually deleted	None
EMS & Medical	5 years	None
FIC	Until manually deleted	None
Fleeing Vehicle Pursuit	5 years	None
Officer Injury	5 years	None
Pending Review	5 years	None
Restricted	5 years	Restricted category
Retain Other	5 years	None
Subject Stop	5 years	None
Traffic Stop	5 years	None
Training	180 days	None
Use of Force	5 years	None

- b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case? **No**
- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs? **No, however we anticipate a higher rate when we negotiate our next contract.**
- d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access? **Yes**

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review? **Undefined**

2. What does your agency consider to be a “place that a reasonable person would expect to be private”? **Undefined**

3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”? **Undefined**

4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **No**

5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:
 - a. What is the approximate number of requests your agency has received for such information each year? **Several from the press**
 - b. Please describe the types of entities requesting such information, if available. **Press only**
 - c. Was the information released? If “yes,” please explain. **No**

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the

body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received. **None**

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes":
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Ongoing investigation and Marsey's Law**
 - c. Could the exemption under review be merged with the other exemption(s)?
9. Has your agency received any complaint about the public record exemption? If "yes," please explain. **No**
10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain. **Has limited effect on the agency/victims**
11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.
 - a. Has your agency disclosed in furtherance of its official duties and responsibilities? **To the SAO**
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? **SAO**

- c. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **No**

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information?

No

- b. Is there any other person with whom your agency believes it should be allowed to share the information?

No

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **N/A**

14. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
 - b. “Law enforcement officer” has the same meaning as provided in s. 943.10.
 - c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.
2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:
- a. Is taken within the interior of a private residence;
 - b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
 - c. Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:
- a. In furtherance of its official duties and responsibilities; or
 - b. To another governmental agency in the furtherance of its official duties and responsibilities.
4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:
- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person’s presence in the recording;
 - b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person’s presence in the recording;

- c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
- d. Pursuant to a court order.
 - (I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
 - (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
- 5. A law enforcement agency must retain a body camera recording for at least 90 days.
- 6. The exemption provided in subparagraph 2. applies retroactively.
- 7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
- 8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

**Name of person and agency completing the questionnaire:
Title of person completing the questionnaire:
Telephone number of person completing the questionnaire:
E-mail address of person completing the questionnaire:**

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it.

Yes

2. Please provide a copy of your policy and procedures regarding body cameras.

See attached

3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera? **Per policy, upon arrival at the scene of a police activity.**
4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
Yes
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.
Officers can view on their laptop prior to uploading to the cloud for storage and can still access once uploaded.
6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as "Marsy's law." The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the "right to prevent 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." Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If "yes," please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.

Yes- Memorandum and not yet in policy.

1. Officers handling the original reporting of a criminal incident shall provide the victim with the Victim/Witness Services Guide (P-0390), along with the insert Statement of Crime Victims' Rights (P-0738). These inserts have been distributed to the six zone substations and are available in the Copy Center.

2. If the victim, lawful representative, or family member desires to invoke his/her right to prevent the disclosure of personal information as granted under Marsy's Law:

a. At the time of the initial reporting, the reporting officer shall select YES for the new Marsy's Law question in the relevant section of the Incident Report.

b. After the initial reporting of the incident, either in person at the Police Memorial Building (PMB) or substation or by a mailed signed affidavit, a Supplemental Report shall be completed to reflect this selection.

3. Once someone has invoked his/her right to prevent the disclosure of personal information, members shall take all reasonable and necessary steps to prevent the disclosure of such information. This applies to public statements, public records releases, and any other method whereby such personal information could be disclosed.

7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings?
90 days, 1year, 4years, 5years, 7years, and 99years (JSO policy Page 19)
 - b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case?
No
 - c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?
No
 - d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access?
Yes – Public
No – Investigators assigned cases or linking past cases to an individual/suspect.

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review?
Any video beyond the threshold of a residence.
2. What does your agency consider to be a “place that a reasonable person would expect to be private”?
Inside residence, bathrooms, changing areas
3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”?
Hospitals, private offices/work places, governmental facilities
4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.
No

5. Can the confidential and exempt information be readily obtained by alternative means?
If "yes," please explain.

Judges Order

6. Has your agency ever received a public records request for any confidential and exempt information? If "yes": NO

a. What is the approximate number of requests your agency has received for such information each year? N/A

b. Please describe the types of entities requesting such information, if available. N/A

c. Was the information released? If "yes," please explain. N/A

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received. None

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes": No

a. Please provide the specific state or federal citation for each exemption.

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

c. Could the exemption under review be merged with the other exemption(s)?

9. Has your agency received any complaint about the public record exemption? If "yes," please explain.

No

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain.

Yes. Domestic situations, nosey neighbors inquiring on an incident in which body worn camera recordings are within a residence.

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

a. Has your agency disclosed in furtherance of its official duties and responsibilities?

Yes

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

Florida Commission on Offender Review, FBI, FHP

c. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity? No

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

a. Has your agency disclosed a body camera recording to any of the above listed persons? If "yes," approximately how times has your agency disclosed such information?

Approximately 130 public records requests

b. Is there any other person with whom your agency believes it should be allowed to share the information? No

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

14. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

b. “Law enforcement officer” has the same meaning as provided in s. 943.10.

c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

a. Is taken within the interior of a private residence;

b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or

c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

a. In furtherance of its official duties and responsibilities; or

b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person’s presence in the recording;

b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person’s presence in the recording;

c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.

d. Pursuant to a court order.

(l) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:

(A) Disclosure is necessary to advance a compelling interest;

- (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
- (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
5. A law enforcement agency must retain a body camera recording for at least 90 days.
 6. The exemption provided in subparagraph 2. applies retroactively.
 7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
 8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
9/5/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire:

Kenneth Birkhofer, Eustis Police Department

Title of person completing the questionnaire:

Captain

Telephone number of person completing the questionnaire:

352-483-5400

E-mail address of person completing the questionnaire:

birkhoferk@ci.eustis.fl.us

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. **Yes**

2. Please provide a copy of your policy and procedures regarding body cameras.
Attached to the email.
3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?
Officers shall activate the BWC to record all dispatched or self-initiated contacts with citizens while in the performance of official duties. Casual citizen or business interaction does not necessarily require the activation of the BWC.
4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
We do, see attached.
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.
They are uploaded to a website (Evidence.com) and are categorized for evidentiary value and public record retention.
6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.
No. We comply with FSS 943.1718 and FSS 119. If there is anything questionable, our legal counsel is consulted for direction.
7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings?
We comply with General Records Schedule GS2 For Law Enforcement, Correctional Facilities And District Medical Examiners.
 - b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case?
Yes.

- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?

No.

- d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access?

Yes.

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review?

The inside of the residence that is not in plain view.

2. What does your agency consider to be a “place that a reasonable person would expect to be private”?

Their home, a restroom, dressing room, or a location not in plain view and not open to the public. Legal counsel will be consulted when necessary.

3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”?

Those facilities licensed under FSS Chapter 395; a “receiving facility” as defined in 394.455(39); and a facility providing services as defined in 409.016(4).

4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

Not to my knowledge.

5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

6. Has your agency ever received a public records request for any confidential and exempt information? If "yes":
- What is the approximate number of requests your agency has received for such information each year?
Varies
 - Please describe the types of entities requesting such information, if available.
News agencies
 - Was the information released? If "yes," please explain.
Only to those agencies who are exempt.
7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.
None.
8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes":
- Please provide the specific state or federal citation for each exemption.
 - Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - Could the exemption under review be merged with the other exemption(s)?
9. Has your agency received any complaint about the public record exemption? If "yes," please explain.
No.
10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain.

Not sure.

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

a. Has your agency disclosed in furtherance of its official duties and responsibilities?

Yes.

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

No.

c. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

No.

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

a. Has your agency disclosed a body camera recording to any of the above listed persons? If "yes," approximately how times has your agency disclosed such information?

Yes, 2.

- b. Is there any other person with whom your agency believes it should be allowed to share the information?

No.

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

All public employee’s information should be exempt.

14. Please provide any additional comments regarding the public record exemption under review.

N/A

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
b. “Law enforcement officer” has the same meaning as provided in s. 943.10.

- c. "Personal representative" means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.
2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:
- Is taken within the interior of a private residence;
 - Is taken within the interior of a facility that offers health care, mental health care, or social services; or
 - Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:
- In furtherance of its official duties and responsibilities; or
 - To another governmental agency in the furtherance of its official duties and responsibilities.
4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:
- To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
 - To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
 - To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
 - Pursuant to a court order.
 - In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - Disclosure is necessary to advance a compelling interest;
 - The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - The recording could be redacted to protect privacy interests; and

(H) There is good cause to disclose all or portions of a recording.

(II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.

5. A law enforcement agency must retain a body camera recording for at least 90 days.

6. The exemption provided in subparagraph 2. applies retroactively.

7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.

8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee**
12/19/2019/18/20199/18/20199/5/2019

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: [Chris Sepe, Flagler County Sheriff's Office](#)

Title of person completing the questionnaire: [Chief](#)

Telephone number of person completing the questionnaire: [386-586-4865](#)

E-mail address of person completing the questionnaire: csepe@flaglersheriff.com

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it. **Yes**

~~2.~~ Please provide a copy of your policy and procedures regarding body cameras.

2.

3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera? Deputies are required to activate their cameras during all interactions with suspects, potential suspects or citizen contacts that could become confrontational (specifics in the attached policy). We allow deputies to temporarily deactivate their cameras in order to discuss tactics or other sensitive information with supervisors or co-workers on the scene. They are also required to dock their cameras at the end of each rotation of work days or when the mobile video recorder is full to ensure the download process.

4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,

5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer. There are multiple locations where deputies can download and tag their recordings. The tags will enable the proper retention periods. Once the videos are downloaded, anyone who is given access can then review the videos.

6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim. No, the provisions of Marsy’s law are not specifically addressed in regards to body camera recordings. The requirements of Marsy’s law and our policy is generally addressed in a separate policy titled “Victim/Witness Assistance”. GO-258

7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings? It depends on what type of incident was recorded. The minimum is 90 days but we also have retention periods of 6 months, 1 year, 2 year, 5 years or even 100 years for life felony, capital felony or missing persons.

- b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case? No
- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs? They are steadily increasing and are starting to affect how we budget.
- ~~d.~~—Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access? Once again, this depends on what type of incident was captured on video. Some cases need to be retained longer in my opinion.
- d.

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

- ~~1.~~—What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review? We don’t release any footage from inside the home (audio is released).
- 1.
- ~~2.~~—What does your agency consider to be a “place that a reasonable person would expect to be private”? The interior of any residence whether rented or owned.
- 2.
- 3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”? Just like the question states, if the place offers health care, mental health care or social services, we honor that and won’t release footage.
- 4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. No.

5. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. We will give the audio or a version of the video with a black box to filter things out.

5.

6. Has your agency ever received a public records request for any confidential and exempt information? If "yes": Yes (Wendee Hartman, Records Supervisor)

~~Wendee Hartman may be able to answer this.~~

a. What is the approximate number of requests your agency has received for such information each year? My guess would be at least 100 per year. One request could have multiple videos under that case number (Wendee Hartman, Records Supervisor)

b. Please describe the types of entities requesting such information, if available. Usually the parties involved, attorney's representing them, media or insurance (Wendee Hartman, Records Supervisor)

c. Was the information released? If "yes," please explain. If they could produce documents/ID authorizing the release- yes, if not, the parts that aren't exempt were extracted (clip) (Wendee Hartman, Records Supervisor)

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.

7. None that I am aware of (Kayla Hathaway, General Counsel at the FCSO) of but Wendee Hartman will have longer historical knowledge than I do. Not that I recall (Wendee Hartman, Records Supervisor)

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes":

8. Not that I'm aware of - of (Kayla Hathaway, General Counsel at the FCSO)

a. Please provide the specific state or federal citation for each exemption. 119 (Wendee Hartman, Records Supervisor)

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. 119 (Wendee Hartman, Records Supervisor)

c. Could the exemption under review be merged with the other exemption(s)? Not that I'm aware of (Kayla Hathaway, General Counsel at the FCSO) Not that I'm aware of.

~~d.c.~~

9. Has your agency received any complaint about the public record exemption? If “yes,” please explain. Not that I’m aware of (Kayla Hathaway, General Counsel at the FCSO)

~~9. I am not aware of any.~~

~~10.~~

~~11.~~10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person’s movements? Please explain. Yes (Kayla Hathaway, General Counsel at the FCSO)

~~12.~~11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

- a. Has your agency disclosed in furtherance of its official duties and responsibilities? Yes, to help ID suspects in an active case (Wendee Hartman, Records Supervisor)
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? Yes, other law enforcement agencies, Department of Children and Families, public school system yes (Wendee Hartman, Records Supervisor)
- c. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information? Yes, clips are provided when they are entitled. Guessing- 50 per year (Wendee Hartman, Records Supervisor) ~~Wendee Hartman may have information on this one.~~
- b. Is there any other person with whom your agency believes it should be allowed to share the information? No.

13.12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

I recommend it be reenacted as is. I am not aware of any issues (Kayla Hathaway, General Counsel at the FCSO).

14.13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

15. Please provide any additional comments regarding the public record exemption under review.

14.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (l)1. As used in this paragraph, the term:
- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
 - b. “Law enforcement officer” has the same meaning as provided in s. 943.10.
 - c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.
2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:
- a. Is taken within the interior of a private residence;
 - b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
 - c. Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:
- a. In furtherance of its official duties and responsibilities; or
 - b. To another governmental agency in the furtherance of its official duties and responsibilities.
4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:
- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person’s presence in the recording;
 - b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person’s presence in the recording;
 - c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
 - d. Pursuant to a court order.
- (l) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
- (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;

- (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
- (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
5. A law enforcement agency must retain a body camera recording for at least 90 days.
 6. The exemption provided in subparagraph 2. applies retroactively.
 7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
 8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

**Name of person and agency completing the questionnaire:
Title of person completing the questionnaire:
Telephone number of person completing the questionnaire:
E-mail address of person completing the questionnaire:**

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it.

YES

2. Please provide a copy of your policy and procedures regarding body cameras.

ATTACHED

3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?

SEE THE ATTACHED POLICY/PROCEDURE

4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.

OFFICERS MANUALLY UPLOAD THE DATA FROM THE CAMERAS INTO THE DATABASE AT POLICE HEADQUARTERS AT THE END OF THEIR TOUR OF DUTY.

6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.

AGENCY POLICY PROHIBITS THE RELEASE OF BODY CAMERA VIDEO THAT DEPICTS VICTIMS WHO HAVE REQUESTED CONFIDENTIALITY IN ACCORDANCE WITH AMENDMENT 6.

7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings?

90 DAYS UNLESS FLAGGED FOR RETENTION FOR SOME OTHER PURPOSE (I.E. USE OF FORCE, CRIMINAL CASE, ETC)

- b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case?

YES

- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?

THE COSTS HAVE BEEN MANAGEABLE THUS FAR.

- d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access?

YES

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

- 1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review?

WE DO NOT HAVE A SPECIFIC DEFINITION FOR THIS PHRASE.

- 2. What does your agency consider to be a “place that a reasonable person would expect to be private”?

WE DO NOT HAVE A SPECIFIC DEFINITION FOR THIS PHRASE.

- 3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”?

WE DO NOT HAVE A SPECIFIC DEFINITION FOR THIS PHRASE.

4. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.

NO

5. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.

NO

6. Has your agency ever received a public records request for any confidential and exempt information? If "yes":

NO

- a. What is the approximate number of requests your agency has received for such information each year?
- b. Please describe the types of entities requesting such information, if available.
- c. Was the information released? If "yes," please explain.

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.

NONE

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes":

- a. Please provide the specific state or federal citation for each exemption.
- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
- c. Could the exemption under review be merged with the other exemption(s)?

9. Has your agency received any complaint about the public record exemption? If “yes,” please explain.

NO

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person’s movements? Please explain.

YES

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

- a. Has your agency disclosed in furtherance of its official duties and responsibilities?

YES

- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?

YES—STATE ATTORNEY, PUBLIC DEFENDER, OTHER LAW ENFORCEMENT AGENCIES.

- c. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

NO

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information?

NO

- b. Is there any other person with whom your agency believes it should be allowed to share the information?

NO

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

INCLUDE PROVISIONS TO ENSURE COMPLIANCE WITH MARSY’S LAW AMENDMENT.

14. Please provide any additional comments regarding the public record exemption under review.

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
- b. “Law enforcement officer” has the same meaning as provided in s. 943.10.
- c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

- a. Is taken within the interior of a private residence;
- b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
- b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person’s presence in the recording;
- b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person’s presence in the recording;
- c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
- d. Pursuant to a court order.

(l) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:

- (A) Disclosure is necessary to advance a compelling interest;

- (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
- (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
5. A law enforcement agency must retain a body camera recording for at least 90 days.
 6. The exemption provided in subparagraph 2. applies retroactively.
 7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
 8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
9/18/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Timothy McCourt, Marion County Sheriff's Office

Title of person completing the questionnaire: General Counsel

Telephone number of person completing the questionnaire: (352) 369-6758

E-mail address of person completing the questionnaire: tmccourt@marionso.com

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it.

Yes.

2. Please provide a copy of your policy and procedures regarding body cameras.

See attached.

3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?

Please see policy (attached).

4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,

(this question was “cut off” on the questionnaire I received)

5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.

The deputies dock their camera at the end of a shift at their district offices or other sheriff’s office facilities. This decrypts the recording and uploads it to Evidence.com. Please see policy for more detailed information.

6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.

Not specifically, no. We have a Marsy’s Law policy and a Body Camera policy. Each apply to body camera recordings.

7. The exemption requires agencies to retain a body camera recording for at least 90 days.

- a. How long does your agency keep such recordings?

It depends on the subject matter. Most is retained until manually deleted.

- b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case?

No, we retain them for 180 days as a minimum.

- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?

No.

- d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access?

Yes.

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

- 1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review?

Any area inside of a dwelling that is not visible from outside of the home if doors/windows are closed.

- 2. What does your agency consider to be a “place that a reasonable person would expect to be private”?

Any place that was not open to the general public and from which a person having possession of that place could exclude others. For example, at an accountant’s office, somebody’s private office would qualify, but not the reception area.

- 3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”?

Hospitals, doctor’s offices, drug rehabilitation centers, our county’s two mental health/Baker Act receiving facilities, and similar facilities.

4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No.

5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

Yes, through court order and pretrial discovery in criminal cases.

6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:

- a. What is the approximate number of requests your agency has received for such information each year?

We have received 95 public records requests for body camera recordings. We redact the confidential and exempt parts. Almost all of them have parts that are confidential and exempt. The number that then ask specifically for the confidential and exempt parts is unknown.

- b. Please describe the types of entities requesting such information, if available.

Most of it is from private citizens. We have received some requests (15 approximately) from media outlets.

- c. Was the information released? If “yes,” please explain.

Yes, subject to redactions. If other information was sought that was confidential, I offered

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.

Zero.

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes":

To my knowledge, other than public records laws, no.

- a. Please provide the specific state or federal citation for each exemption.
- b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
- c. Could the exemption under review be merged with the other exemption(s)?

9. Has your agency received any complaint about the public record exemption? If "yes," please explain.

No.

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain.

Generally, yes.

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

- a. Has your agency disclosed in furtherance of its official duties and responsibilities?

Yes.

- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

Yes. State Attorney's Office, other law enforcement agencies, and the Board of County Commissioners.

- c. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity?

No.

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If "yes," approximately how times has your agency disclosed such information?

Yes. 60% of the time.

- b. Is there any other person with whom your agency believes it should be allowed to share the information?

No.

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

When we have to redact body camera recordings that contain recordings that are confidential and exempt because they were recorded in a home, facility, or private place, the question has come up whether we (1) Redact the video recording only so that the audio recording can still be heard; or (2) Redact both the audio and video portions of the recording (i.e., the whole recording while it is in somebody’s home).

We have opted to do #2. An explanation follows.

The purpose of the exemption would seem to call for only the video to be redacted and for the audio to be disclosed, given that the interior of somebody’s home is what is sensitive and personal, more so than the substance of a person’s conversations with law enforcement officers. In most of these cases, the recording contains a conversation between a law enforcement officer and a victim or witness to a crime that just happens to take place inside of a home. There is nothing about the conversation itself that would require it to be kept more private than if the conversation had occurred in somebody’s driveway. Redacting the video portion would seem to accomplish the goal of the exemption; releasing the audio portion would not seem to subvert the goal of the exemption.

However, the statute’s language says that a “body camera recording, or portion thereof, is confidential and exempt ... if the recording is taken (in a private place).” The phrase “body camera recording” is not defined in the statute. A plain reading of the phrase “body camera recording” would not seem to differentiate between the audio and video portions of the recording; they are lumped together under this definition and the confidential and exempt portions of a body camera recording would therefore include both the audio and video portions of a recording made inside of somebody’s residence.

For that reason, we have redacted both the audio and video portions of body camera recordings when the recording is made within someone’s home or another private place.

I do not know whether this was the intent of the legislature but it seems to create the possibility of litigation. I would suggest the statute could be modified to clarify what is intended with this exemption by either (1) providing that only the video portion of a body camera recording made inside of a residence is confidential and exempt, but that any audio recording may be disclosed; or (2) define the term “body camera recording”

to expressly state that the recording includes both the audio and video portions of a recording.

If video portion only is exempt, I would recommend the following be added to the statute:

119.071(2)(l)2.

If a body camera recording:

- a. Is taken within the interior of a private residence;
- b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- c. Is taken in a place that a reasonable person would expect to be private,

Then the video portion of the body camera recording is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Audio recordings or the audio portions of any audio-video recordings made using body cameras in a place specified in this section are not confidential and exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution, unless protected from disclosure by another public records exemption.

If audio and video are both exempt, I would recommend the following be added to the statute:

119.071(2)(l)1.d: "Body camera recording" means an audio recording, video recording, or audio-video recording made using a body camera by a law enforcement officer.

119.071(2)(l)2. "A body camera recording, or a portion thereof, including audio recordings and video recordings, is confidential and exempt..." (added language underlined)

14. Please provide any additional comments regarding the public record exemption under review.

None.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
9/5/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Robert Norris
Title of person completing the questionnaire: Captain
Telephone number of person completing the questionnaire: (850) 609-3051
E-mail address of person completing the questionnaire: rnorris@sheriff-okaloosa.org

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it.
Yes
2. Please provide a copy of your policy and procedures regarding body cameras. *See attached General Order*

3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?

See attached General Order

4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,

5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.

See attached General Order

6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.

No

7. The exemption requires agencies to retain a body camera recording for at least 90 days.

- a. How long does your agency keep such recordings?

Varies – See attached General Order

- b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case? *Time retentions vary, see attached General Order.*

- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?

We entered into long term contracts with the company that stores our videos and bundling of services

- d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access?

Yes

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review?

Inside the structure

2. What does your agency consider to be a “place that a reasonable person would expect to be private”?

A location an individual has exhibited an actual (subjective) expectation of privacy and the expectation is one that society is prepared to recognize as reasonable

3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”?

Any location that provides healthcare or social services

4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

No

5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

Not as it pertains to the body camera recordings

6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”:

- a. What is the approximate number of requests your agency has received for such information each year? *Approximately 125 per year*

- b. Please describe the types of entities requesting such information, if available.

General Public and Media.

- c. Was the information released? If “yes,” please explain.

Yes, only in accordance with Florida State Statute regarding confidential and exempt information.

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received. *None to date*

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes": *Unknown*
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?

9. Has your agency received any complaint about the public record exemption? If "yes," please explain.
No

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain.
Yes.

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.
 - a. Has your agency disclosed in furtherance of its official duties and responsibilities?
Yes
 - b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which

agencies? *Local Law Enforcement Agencies, Federal Law Enforcement Agencies, CJSTC, Health Department, School Board, DUI Review Board, State Attorney, Attorney General and Military entities.*

- c. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?

No

12. Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information? *Yes, approximately 200*

- b. Is there any other person with whom your agency believes it should be allowed to share the information?

No

13. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

14. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

15. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

b. “Law enforcement officer” has the same meaning as provided in s. 943.10.

c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

a. Is taken within the interior of a private residence;

b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or

c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

a. In furtherance of its official duties and responsibilities; or

b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person’s presence in the recording;

b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person’s presence in the recording;

- c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
- d. Pursuant to a court order.
 - (I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
 - (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
- 5. A law enforcement agency must retain a body camera recording for at least 90 days.
- 6. The exemption provided in subparagraph 2. applies retroactively.
- 7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
- 8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

Mike Erickson

Senate Committee on Criminal Justice

Erickson.Mike@flsenate.gov

(850) 487-5192

Lance Toliver

**House Oversight, Transparency & Public
Management Subcommittee**

Lance.Toliver@myfloridahouse.gov

(850) 717-4890

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: [Kyle Morse, Orange County Sheriff's Office, FL](#)

Title of person completing the questionnaire: [Lieutenant](#)

Telephone number of person completing the questionnaire: [407-254-7270 *70480](#)

E-mail address of person completing the questionnaire: Kyle.Morse@ocfl.net

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. [Yes.](#)
2. Please provide a copy of your policy and procedures regarding body cameras. [Attached. Most up to date policy, General Order 9.1.9.](#)
3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?
[All body worn camera’s \(BWC’s\) are operated by deputies after they have received agency approved training. Deputies are to activate their BWC in performance of their official duties. Deputies upload their BWC video evidence utilizing one of the two uploading methods. After the video evidence is uploaded it is no longer retained on the BWC. The evidence is stored in a web based site called evidence.com.](#)
4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
[Yes, GO 9.1.9 \(January 8, 2019\)](#)
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.
[Deputies upload their BWC video evidence utilizing one of the two uploading methods. After the video evidence is uploaded it is no longer retained on the BWC. The evidence is stored in a web based site called evidence.com. The video evidence is stored in evidence.com for a minimum of 90 days.](#)
6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.
[OCSO has a policy outlining body worn camera recordings of victims in general and obtaining their consent \(General Order 9.1.9\). Policy does not otherwise specifically address body worn camera recording of injured or deceased victims.](#)

7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings?
Minimum 90 days
 - b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case? Yes.
 - c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs? No.
 - d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access? Yes.

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review? Taken on a case by case basis; generally inside the threshold of a dwelling.
2. What does your agency consider to be a “place that a reasonable person would expect to be private”? Taken on a case by case basis; some examples would be bathrooms or locker rooms.
3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”? Taken on a case by case basis; some examples would be hospitals, emergency rooms, ambulance, doctor’s office, treatment centers, out-patient clinics, therapist’s offices.
4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. No.

5. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain. No.

6. Has your agency ever received a public records request for any confidential and exempt information? If "yes": Yes, by virtue of requests for body worn camera videos.
 - a. What is the approximate number of requests your agency has received for such information each year? Year to date for 2019, approximately 200 requests for body worn camera videos; however, it is unknown how many videos were redacted for confidential and exempt information.

 - b. Please describe the types of entities requesting such information, if available. General members of the public, other law enforcement agencies, State Attorney's Office, law firms, and insurance companies.

 - c. Was the information released? If "yes," please explain. Confidential and exempt information is not released unless requestor is otherwise statutorily entitled to receive it.

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received. None

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes": Unknown
 - a. Please provide the specific state or federal citation for each exemption.

 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

 - c. Could the exemption under review be merged with the other exemption(s)?

9. Has your agency received any complaint about the public record exemption? If "yes," please explain. No.

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain. Yes

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

- a. Has your agency disclosed in furtherance of its official duties and responsibilities? [Yes](#)
- b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies? [State Attorney's Office, DCF, and other law enforcement agencies](#)
- c. Is there any other entity with which your agency believes it should be allowed to share the information? If "yes," which entity? [No.](#)

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If "yes," approximately how times has your agency disclosed such information? [Yes, unknown.](#)
- b. Is there any other person with whom your agency believes it should be allowed to share the information? [No.](#)

12. Which of the following actions does your agency recommend the Legislature take (Please select one): [Defer to the Florida Sheriff's Association Legislative Committee for recommendations.](#)

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). [N/A.](#)

14. Please provide any additional comments regarding the public record exemption under review. [N/A.](#)

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
 - b. “Law enforcement officer” has the same meaning as provided in s. 943.10.
 - c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.
2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:
- a. Is taken within the interior of a private residence;
 - b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
 - c. Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
 - b. To another governmental agency in the furtherance of its official duties and responsibilities.
4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:
- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
 - b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
 - c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
 - d. Pursuant to a court order.
 - (I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
 - (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
5. A law enforcement agency must retain a body camera recording for at least 90 days.
6. The exemption provided in subparagraph 2. applies retroactively.
7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Cpl. Robert Gartenberg, Natalie Scruggs – Pasco Sheriff’s Office

Title of person completing the questionnaire: Gartenberg – Law Enforcement Officer, Corporal; Scruggs – Senior Assistant General Counsel

Telephone number of person completing the questionnaire: 813-235-6180; 727-844-7701

E-mail address of person completing the questionnaire: rgartenberg@pascosheriff.org; nscruggs@pascosheriff.org

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. **Yes**

2. Please provide a copy of your policy and procedures regarding body cameras.
Please see Pasco Sheriff's Office General Order 41.21.
3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera? **Please see Pasco Sheriff's Office General Order 41.21.**
4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,

Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.
At the end of a call, the member has the option to connect via Bluetooth the body camera to their cellphone to add a case number and category. At the end of the shift, the member will dock their body camera into a docking station to upload the video files to the server. Body worn camera videos are maintained and stored on a secure server accessible to members of the Pasco Sheriff's Office.

5. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as "Marsy's law." The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the "right to prevent 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." Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If "yes," please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.
Upon receipt of a public records request for a body worn camera video that contains victim information as outlined in Marsy's law, the Pasco Sheriff's Office redacts any information 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.
6. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings? **The retention period ranges from four (4) years to indefinite retention.**
 - b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case? **A non-event is retained for four years.**

- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs? **No.**
- d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access? **Yes.**

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review? **When a member recording video on a body camera captures any portion of the interior of a private residence / private area. This includes standing outside the threshold and capturing the inside of the residence / private area.**
2. What does your agency consider to be a “place that a reasonable person would expect to be private”? **The Pasco Sheriff’s Office evaluates the totality of the circumstances based upon the location and reviews applicable case law to determine where whether the recording was taken in or of a “place that a reasonable person would expect to be private”**
3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”? **Any facility that offers services for health care, mental health care, or social services.**
4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. **None to date.**
5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **Confidential and/or exempt information may be obtained through discovery in a criminal prosecution and to those persons/entities outlined in F.S. 119.071(2)(l)4**
6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **The Pasco Sheriff’s Office has received numerous public records**

requests for body worn camera videos that contain confidential and/or exempt information. Redactions are made before release of any confidential and/or exempt information.

a. What is the approximate number of requests your agency has received for such information each year? **The Pasco Sheriff's Office receives approximately 200 public records requests per year.**

b. Please describe the types of entities requesting such information, if available. **Citizens, law enforcement agencies, federal, state, and local governmental agencies, news organizations, etc.**

c. Was the information released? If "yes," please explain. **The body worn camera footage would be reviewed and then redacted pursuant to the statute. A redacted version would be released, removing all confidential and/or exempt information, unless the requestor was entitled to the information pursuant to F.S. 119.071(2)(l)4 or court order.**

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received. **None**

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes": **Florida Statute 119.071 contains numerous statutory exemptions for confidential and/or exempt information which may be included in a body worn camera video. The confidential and/or exempt information would have to be redacted prior to release of body worn camera footage.**

a. Please provide the specific state or federal citation for each exemption. **Florida Statute 119.071.**

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information. **Pursuant to applicable Florida Statute, in the event a record is redacted, the agency holding and releasing the information must provide the specific statutory exemption regarding the confidential and/or exempt information. In the event of a redaction, the Pasco Sheriff's Office provides the specific statutory exemption upon release of the record.**

c. Could the exemption under review be merged with the other exemption(s)? **Other exemptions may be used to withhold certain information, but, this specific**

exemption protects specific information that may not otherwise be confidential and/or exempt.

9. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **The Pasco Sheriff’s Office is unaware of any formal complaints.**

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person’s movements? Please explain. **Yes, body worn camera videos taken in the interior of a residence, a place where a person has a reasonable expectation of privacy, health care facility, mental health facility, social services facility should not be available to the general public to view. These places may contain sensitive information about the assets of a person, health care information or treatment, mental health information or treatment, and other sensitive information that should not be made public or available to the public solely because a person had contact with law enforcement.**

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.
 - a. Has your agency disclosed in furtherance of its official duties and responsibilities? **Yes.**

 - b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **Yes. Federal agencies, BATF, FBI, DEA, etc., state and local law enforcement agencies, the State Attorney’s Office, all upon official request.**

 - c. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **Not at this time.**

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and

- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information? **Yes, approximately 200 public records requests.**
- Is there any other person with whom your agency believes it should be allowed to share the information? **No.**

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). **N/A**

14. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

- “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
- “Law enforcement officer” has the same meaning as provided in s. 943.10.
- “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a

person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

- a. Is taken within the interior of a private residence;
- b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
- b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
- b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
- c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
- d. Pursuant to a court order.

(I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:

- (A) Disclosure is necessary to advance a compelling interest;
- (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
- (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
- (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- (G) The recording could be redacted to protect privacy interests; and
- (H) There is good cause to disclose all or portions of a recording.

(II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.

5. A law enforcement agency must retain a body camera recording for at least 90 days.

6. The exemption provided in subparagraph 2. applies retroactively.

7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.

8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

**James N Cruse Jr – Chief of Police
Perry Police Department
850-584-5121
850-843-1606
Jamie.cruse@perrypolice.net**

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. -- **YES**

2. Please provide a copy of your policy and procedures regarding body cameras.
Copy Provided
3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera? **End Users are required to ensure proper operation of the BWC, Officers are required to utilize BWCs in an situation where a field contact is made with a person, in any situation where the user would customarily contact dispatch to notify them of officer activity. Users are required to review video prior to completing written narratives of reports. Transfer from the BWC to the department storage system requires the user to place the BWC into an upload station for transfer and archiving.**
4. If your agency has policies or procedures governing the use of body cameras or body camera recordings, **We have written policies**
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer. **Users place their issued BWCs into a department upload station for transfer for archiving. The only way to view or prepare them for transmittal to any other person is through the vendor supplied software. The software tracks all phases of utilization of the recording to include: upload, viewing (by user) and download. There is an audit log to show when access recording and what action taken while accessing the recordings. We have redaction software capable of removing and covering identities of individuals as well as covering or removing audio segments for public record release purposes. An area where a recording is considered private it not releasable as a public record and will be redacted to remove recordings in the areas where privacy is a concern. Recording are transferred to criminal justice agencies and / or prosecuting authorities without redaction if it is considered evidence in a criminal proceeding.**
6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim. **We do not have a written policy addressing this specifically, we are however not releasing any information that could lead to the identity or location of a victim, we treat BWC recordings as any other public record in regards to Marsy’s law.**

7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings? **180 days, unless tied to a criminal prosecution.**
 - b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case? **No**
 - c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs? **We do have an ongoing concern with cost or storage, we have not taken any action to address these concerns outside of normal department expenses and budgeting at the city planning level.**
 - d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access? **We prefer the 180 storage procedure that we are currently utilizing. This helps us in internal investigations and mirrors the length of time that we are authorized by statute to conduct an internal administrative investigation.**

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review? **Any recording that occurs within the threshold of a doorway or other entry access point.**
2. What does your agency consider to be a “place that a reasonable person would expect to be private”? **Interior of a residence, restrooms, changing rooms, medical treatment facility treatment areas.**

3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”? **Any area of a medical facility that is designed specifically for examination of a person or consultation with a person concerning diagnosis, treatment, prognosis or delivery of information concerning mental or physical health of a person.**

4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

NO

5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

No – court order only

6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: **No**

a. What is the approximate number of requests your agency has received for such information each year? **N/A**

b. Please describe the types of entities requesting such information, if available.
N/A

c. Was the information released? If “yes,” please explain. **N/A**

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received. **NONE**

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If “yes”: **Unknown**

a. Please provide the specific state or federal citation for each exemption.
Unknown

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

c. Could the exemption under review be merged with the other exemption(s)?
Unknown

9. Has your agency received any complaint about the public record exemption? If “yes,” please explain. **YES**

Local Media (print newspapers) only as it pertains to Marsy’s Law

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person’s movements? Please explain. **YES**

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

- a. Has your agency disclosed in furtherance of its official duties and responsibilities? **YES**
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies? **YES – Local Sheriff’s Office, State Attorney’s Office, FDLE, Department of Juvenile Justice, Probations and Parole, US Department of Justice law enforcement divisions.**
- c. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? **Yes – Any vetted organization dealing with the health safety and welfare of juveniles or children that are at risk or in need of a safety plan.**

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information? **NO**
- b. Is there any other person with whom your agency believes it should be allowed to share the information? **NO**

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is**
- Reenact the public records exemption with changes**

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

14. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

- (l)1. As used in this paragraph, the term:
- a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
 - b. “Law enforcement officer” has the same meaning as provided in s. 943.10.
 - c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.
2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:
- a. Is taken within the interior of a private residence;
 - b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
 - c. Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:
- a. In furtherance of its official duties and responsibilities; or
 - b. To another governmental agency in the furtherance of its official duties and responsibilities.
4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:
- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person’s presence in the recording;
 - b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person’s presence in the recording;
 - c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
 - d. Pursuant to a court order.
- (l) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
- (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;

- (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
- (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
5. A law enforcement agency must retain a body camera recording for at least 90 days.
 6. The exemption provided in subparagraph 2. applies retroactively.
 7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
 8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

**Name of person and agency completing the questionnaire: Sgt Anthony Chronister
Title of person completing the questionnaire: Special Events Sgt
Telephone number of person completing the questionnaire: 407-823-1892
E-mail address of person completing the questionnaire: Anthony.chronister@ucf.edu,
Patricia.trovillion@ucf.edu**

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If "no," please return this questionnaire immediately. If "yes," please complete the remainder of the questionnaire before returning it.

Yes

2. Please provide a copy of your policy and procedures regarding body cameras.
Provided at end of questionnaire

3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?

1. BWC Systems will be issued to every sworn law enforcement officer. Every officer issued a BWC will be responsible for the care, custody, and control of all issued equipment. The BWC will be operated in accordance with the manufacturer's recommendations and departmental regulations. 2. Officers are required to ensure that their BWC is working properly and fully charged at the beginning of every shift. 3. Officers will immediately notify a supervisor of any malfunctions that are discovered. 4. Officers shall upload all BWC digital data at the conclusion of their shift by placing their BWC in the assigned docking stations or utilizing other department approved uploading procedures. 5. Officers shall classify recorded events as appropriate, based on the options available under the classification and storage software. 6. Informing the Public that a BWC is in use a. When feasible, officers are encouraged to inform members of the public that they are being recorded. b. If asked, officers should inform those inquiring that audio-video recording equipment is in use, unless doing so would be unsafe for officer or members of the public. 7. Extra-Duty assignments a. Officers shall use it during extra-duty work and shall comply with the BWC policy. b. Uploading BWC data from extra-duty shifts (1) Any audio/visual data regarding a use of force by or against an officer, or data that may be evidence in a criminal case, shall be uploaded in the same manner as if the data had been collected while on duty. (2) All other BWC data recorded during extra-duty work shall be uploaded by the start of the next on-duty shift, as long as the shift begins within 72 hours of the extra-duty shift's conclusion. If the next on-duty shift will begin more than 72 hours later the BWC data shall be uploaded at the conclusion of the extra-duty shift. 8. Uniformed officers: a. Shall wear the BWC and keep it powered on at all times during their shift when they can reasonably anticipate that they may become involved in a situation for which activation is appropriate in accordance with this policy, b. May power off their BWCs when entering a center for domestic or sexual violence victim advocacy or assistance, as long as there will not be any interaction with a suspect; c. Shall power off their BWC during the initial contact with a victim of sexual battery; d. Shall power off their BWCs for any court-room proceeding, deposition or similar legal proceeding; e. Shall power on and activate the BWC if a situation requiring activation occurs; f. Are not required to wear their assigned BWC when attending training, court, funerals, award ceremonies or any other event that is approved by their supervisor. 9. Plainclothes Officers (Detective) shall be responsible for the following: a. Shall have the BWC readily available; University of Central Florida Police Department General Order-5700 Body Worn Camera Page 2 of 5 UCFPD Temp 03 04/2019 b. Do not need to wear the BWC during plainclothes operation in which displaying or indicating their status as a police officer would compromise the operation. c. Are not required to wear it during their on-duty shift except when executing a search warrant in the field or when ordered to by a supervisor. d. When working in uniform, detectives assigned a BWC shall wear it in accordance with this policy.

4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.

At the end of the officer's tour of duty they are required to download their video via a docking station or computer program called Sync. The officers will label their video per policy.

6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.

We do not have a specific policy for body worn cameras, but we apply appropriate laws to our BWC evidence.

7. The exemption requires agencies to retain a body camera recording for at least 90 days.
 - a. How long does your agency keep such recordings? Minimum 90 days
 - b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case? No
 - c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs? No
 - d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access? No

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review? Apartments/dorm rooms/fraternity & sorority houses, including common areas.

2. What does your agency consider to be a “place that a reasonable person would expect to be private”? Bathrooms, locker rooms, changing areas.
3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”? Hospital, health clinics, behavioral centers, etc.
4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. Not known
5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.
Yes, by Records personnel.
6. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: Yes
 - a. What is the approximate number of requests your agency has received for such information each year? 20
 - b. Please describe the types of entities requesting such information, if available.
Attorneys, parents, students, media
 - c. Was the information released? If “yes,” please explain. Yes, depending on who is requesting the information. If the requestor is not someone who is able to have the information (under the exemption), then it is redacted prior to release.
7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.
None known
8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If “yes”: No
 - a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

- c. Could the exemption under review be merged with the other exemption(s)?
9. Has your agency received any complaint about the public record exemption? If “yes,” please explain. None known
10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person’s movements? Please explain.
Yes
11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.
- a. Has your agency disclosed in furtherance of its official duties and responsibilities?
yes
- b. Does your agency share information with another governmental agency in furtherance of that agency’s official duties and responsibilities? If “yes,” which agencies?
Yes. SAO, other LEA, Student conduct, Title IX
- c. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity? no

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information? Yes. Approx. 20.
- b. Is there any other person with whom your agency believes it should be allowed to share the information? no

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend). N/A

14. Please provide any additional comments regarding the public record exemption under review. N/A

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

b. “Law enforcement officer” has the same meaning as provided in s. 943.10.


c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

a. Is taken within the interior of a private residence;

- b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- c. Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:
 - a. In furtherance of its official duties and responsibilities; or
 - b. To another governmental agency in the furtherance of its official duties and responsibilities.
4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:
 - a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
 - b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
 - c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
 - d. Pursuant to a court order.
 - (I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
 - (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
5. A law enforcement agency must retain a body camera recording for at least 90 days.
6. The exemption provided in subparagraph 2. applies retroactively.
7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

UCF Policy

Scope : All Sworn	University of Central Florida Police Department  General Order	Pages: 5 Responsibility: BWC Coordinator Review: February Effective Date: February 17, 2015 Revision Date: September 18, 2018 Rescinds: February 17, 2015
TITLE: 5700 –BODY WORN CAMERA		

5700 Personal Body Camera Systems

5700.1 Purpose: The purpose of this General Order is to establish guidelines and procedures for the use of Body Worn Camera (BWC) systems by members of the University of Central Florida Police Department (Department).

5700.2 Policy: The University of Central Florida Police Department is committed to protecting the constitutional rights of all people. The Department recognizes the benefit of employing equipment and technology that will assist us in our ethical, legal, and moral obligation to identify, collect, and preserve evidence. The use of BWC systems have been employed to assist in obtaining that goal and increase transparency and accountability to the University community the Department serves and protects.

5700.3 Procedure:

A. Responsibilities:

1. BWC Systems will be issued to every sworn law enforcement officer. Every officer issued a BWC will be responsible for the care, custody, and control of all issued equipment. The BWC will be operated in accordance with the manufacturer’s recommendations and departmental regulations.
2. Officers are required to ensure that their BWC is working properly and fully charged at the beginning of every shift.
3. Officers will immediately notify a supervisor of any malfunctions that are discovered.
4. Officers shall upload all BWC digital data at the conclusion of their shift by placing their BWC in the assigned docking stations or utilizing other department approved uploading procedures.
5. Officers shall classify recorded events as appropriate, based on the options available under the classification and storage software. (See attachment for definitions of classifications)
6. Informing the Public that a BWC is in use
 - a. When feasible, officers are encouraged to inform members of the public that they are being recorded.
 - b. If asked, officers should inform those inquiring that audio-video recording equipment is in use, unless doing so would be unsafe for officer or members of the public.
7. Extra-Duty assignments
 - a. Officers shall use it during extra-duty work and shall comply with the BWC policy.
 - b. Uploading BWC data from extra-duty shifts
 - (1) Any audio/visual data regarding a use of force by or against an officer, or data that may be evidence in a criminal case, shall be uploaded in the same manner as if the data had been collected while on duty.
 - (2) All other BWC data recorded during extra-duty work shall be uploaded by the start of the next on-duty shift, as long as the shift begins within 72 hours of the extra-duty shift’s conclusion. If the next on-duty shift will begin more than 72 hours later the BWC data shall be uploaded at the conclusion of the extra-duty shift.
8. Uniformed officers:

- a. Shall wear the BWC and keep it powered on at all times during their shift when they can reasonably anticipate that they may become involved in a situation for which activation is appropriate in accordance with this policy,
 - b. May power off their BWCs when entering a center for domestic or sexual violence victim advocacy or assistance, as long as there will not be any interaction with a suspect;
 - c. Shall power off their BWC during the initial contact with a victim of sexual battery;
 - d. Shall power off their BWCs for any court-room proceeding, deposition or similar legal proceeding;
 - e. Shall power on and activate the BWC if a situation requiring activation occurs;
 - f. Are not required to wear their assigned BWC when attending training, court, funerals, award ceremonies or any other event that is approved by their supervisor.
9. Plainclothes Officers (Detective) shall be responsible for the following:
- a. Shall have the BWC readily available;
 - b. Do not need to wear the BWC during plainclothes operation in which displaying or indicating their status as a police officer would compromise the operation.
 - c. Are not required to wear it during their on-duty shift except when executing a search warrant in the field or when ordered to by a supervisor.
 - d. When working in uniform, detectives assigned a BWC shall wear it in accordance with this policy.
10. Supervisors shall be responsible for the following:
- a. Shall confirm that all officers assigned to their unit have uploaded their recordings at the end of their shift;
 - b. Will review recordings of all officers involved in an incident involving:
 - (1) Injury to prisoners,
 - (2) Response to resistance,
 - (3) Injury to officers,
 - (4) Vehicle pursuits,
 - (5) Response to Signal 43,
 - (6) Citizen complaints,
 - (7) Anytime it is deemed appropriate to review recordings, and
 - (8) As directed by the Chief of Police or designee;
 - c. Shall conducted a weekly audit, randomly select two (2) recordings to review in their entirety (These reviews will be conducted for training and integrity purposes);
 - d. Shall conduct periodic and random inspections of BWC equipment to confirm that it is in proper working order.
11. BWC Coordinator shall be responsible for the following:
- a. Overall BWC Program coordination of training,
 - b. Shall serve as the Department's administrators for approved database,
 - c. Maintenance and repair of BWC equipment, and
 - d. Shall conduct a bi-annual audit of BWC equipment and storage usage and submit findings in memorandum format via chain of command to Chief of Police.

B. Activation

1. Officers shall activate their BWC for the following circumstances:
- a. When dispatched or assigned to a call, the BWC shall be activated. This includes assisting officers.
 - b. When self-initiating a call, as soon as possible and prior to contacting a person or exiting a patrol vehicle.
 - c. Prior to taking any law enforcement action.
 - d. When directed to activate the BWC by supervisor.
 - e. Examples of situations that require activation include, but are not limited to:
 - (1) Responding to calls for service in an emergency Code 3 status,
 - (2) All traffic/foot pursuits,
 - (3) All traffic stops,
 - (4) Suspicious persons/vehicle,
 - (5) All requests for searches,
 - (6) K9 deployments,
 - (7) All arrests/NTAs.

- f. The BWC should be left on until the arrestee is safely secured inside the patrol vehicle and the situation is calmed, or upon the completion of an NTA. Officers have the discretion to keep the camera on at all times, and
 - g. Any incident upon the direction of a supervisor or at the request of another law enforcement officer.
 - h. Nothing in this procedure shall prohibit an officer from activating their BWC system whenever the officer deems the use to be appropriate, unless directed by a supervisor. An officer will document in his/her report if the entire incident or any portion is not recorded.
 - i. Officers providing assistance to other law enforcement agencies, will notify them that the incident is being recorded.
 - j. Officers will only use Department-issued BWC systems to record official Department activities. All recordings are the property of the University of Central Florida Police Department.
 - k. The BWC system may be manually deactivated during non-enforcement activities such as protecting an accident scene from vehicular traffic or during personal time (e.g., using the restroom etc.)
 - l. Consideration should be given as to whether to record incidents of a sensitive nature, including but not limited to, interviewing victims of crimes, situations involving minors, and recording the interior of a victim's residence, etc. It is recommended that officers make victims aware of the presence and/or recording of an incident.
 - m. Nothing in the activation procedure precludes an officer from using the BWC to record phone calls the officer deems to be of evidentiary value or that otherwise require activation.
 - n. Every officer should restrict recording under the following circumstances:
 - (1) Undercover officers,
 - (2) Confidential informants,
 - (3) Law enforcement intelligence,
 - (4) Other law enforcement sensitive information, and
 - (5) Events in restrooms, dressing rooms, or other areas where there is a reasonable expectation of privacy, unless special circumstances exist.
 - o. In the event a video is recorded of any of the specific restrictions, the officer shall categorize the video in Evidence.com™ as "Exempt."
2. Failure to Activate
- a. If there is a failure to activate the BWC or a late activation in any of the above situations the officer shall document the reasons for the failure in the officer's report or supplement.
 - b. If a report will not be prepared, the reason(s) for the failure to activate shall be documented via added remarks in CAD, as soon as practical.
 - (1) Documentation shall begin with the following prefix: "BWC:", followed by the reason for the documentation.
- C. Deactivation
- 1. Once activated, the BWC shall be left in the record mode until the conclusion of the event. The conclusion of the event occurs when either the officer or citizen(s) has left the scene or a detention or transport has concluded.
 - a. If a transport involves a transfer of custody, the event is not concluded until the transfer is complete.
 - b. When transporting arrestees to the county jail the transfer may be considered complete at the intake door from the secure garage unless custody has been transferred prior to that point, and the BWC may be deactivated in line with county jail policy.
 - c. The BWC may be deactivated if an event has otherwise concluded but the officer remains at the scene to prepare reports or for another similar reason not involving a situation requiring activation.
 - 2. Critical Incidents- Deactivation
 - a. All officers in a critical incident shall leave their BWCs activated while on scene, until directed by the Incident Commander.
 - (1) When the BWCs have been deactivated in accordance with this section on Critical Incidents, officers may reactivate if they feel it is appropriate, and shall reactivate if otherwise required by the BWC policy.
 - b. Early Deactivation
 - (1) Narration
 - (a) If a BWC is deactivated prior to the conclusion of an event, officers shall describe the reason by narration prior to deactivation.

- (b) Supervisors deactivating to perform administrative functions shall describe the reason by narration prior to each deactivation, or following reactivation.
- (2) Documentation
 - (a) If a report will be prepared, the early deactivation and the reason shall also be documented in the officer's report or supplement.
 - (b) If a report will not be prepared, the reason for the early deactivation shall be documented via added remarks in CAD, as soon as practical.
 - 1 Documentation shall begin with the following prefix: "BWC:" followed by the reason for the documentation.
 - 2 Supervisors performing administrative functions may summarize their associated deactivations in any required documentation.
- c. Accidental Deactivation
 - (1) If an accidental deactivation is discovered, the BWC shall be immediately reactivated.
 - (2) The officer shall narrate the cause of the accidental deactivation as soon as practical, and shall follow the other reporting requirements for early deactivations.
- d. Notwithstanding the above, once an event has been stabilized and if the officer reasonably believes there is no longer audio or visual evidence to capture, and that none of the circumstances requiring activation will likely occur, the BWC may be deactivated during activities such as:
 - (1) Monitoring assigned traffic posts.
 - (2) The incident or event is of such duration that it is necessary to deactivate the BWC to conserve power or storage.
 - (3) When guarding suspects/arrestees at a hospital, if no other activation conditions are met (it must be activated if there will be contact with the suspect, if the suspect becomes combative, etc.).
- e. When an event is still in progress, the BWC may be temporarily deactivated in the following situations, but shall be reactivated as soon as the temporary situation has concluded or if ordered to by a supervisor, and the required documentation shall be made according to the Early Deactivation section:
 - (1) To protect the identity of an officer in an undercover capacity or during a plainclothes operation.
 - (2) To protect the identity of a confidential informant.
 - (3) When not in contact with a suspect, arrestee, victim or witness, officers may temporarily deactivate their BWC if it is necessary to discuss issues surrounding the incident with another employee or an outside agency, in private.
 - (a) This includes discussions between Field Training Officers with officers in training that are specific to training issues.
 - (b) If the BWC is deactivated per this clause, it must be reactivated prior to any contact with a suspect, arrestee, victim or witness, including any transportation.
 - (4) If a request is made for a BWC to be turned off by a party being contacted, the officer should take into account the overall circumstances and what is most beneficial to all involved, before deciding to honor the request. For example, an officer may choose to turn off the BWC if its operation is inhibiting a victim or witness from giving a statement. Factors to consider may include the type of call and the vulnerability of the victim, such as the victim of a sexual assault.
 - (5) When ordered to by a supervisor. Both the officer and supervisor shall document the reason for the deactivation as described in the Report Writing section of this policy.

D. Restrictions

- 1. The BWC shall not be used for the purpose of intimidating or discouraging an individual from observing police activity, making appropriate inquiries to the police or making a complaint.
- 2. Officers shall not use the BWC to record interactions solely with or among other department employees, except in circumstances for which activation is appropriate in accordance with this policy.
- 3. Officers shall not use the BWC for personal use or for any other reason inconsistent with this policy.
- 4. Employees shall only use BWCs and BWC equipment authorized by the Department.

5. Disabling BWC equipment, intentionally interfering with audio or video recording capabilities, and altering, duplicating, deleting or destroying BWC recordings are prohibited, except by Authorized Personnel in the course and scope of their lawful job duties and in accordance with record retention laws and policies and the provisions of this policy. Only the Chief or his or her designee can designate such Authorized Personnel.

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of 5

6. The BWC shall not be activated solely for the purpose of surveillance of, or identification of individuals engaged in constitutionally protected activities conducted in a lawful manner.

E. Report Writing

1. To ensure the accuracy of reports, an officer should review audio and video data before making a report or statement.
2. An officer shall document the following in his or her report:
 - a. Whether audio or video evidence was gathered relating to the events described in the report.
 - b. If the BWC was not activated as required and the reason(s) why not, in accordance with the Activation section.
 - c. Early or accidental deactivations, in accordance with the Deactivation section.
 - d. Any malfunction of the BWC equipment in either the recording or the uploading of the event.

F. Maintenance, Repair, and Replacement of BWC Systems

1. All malfunctioning equipment shall be submitted to the BWC Coordinator for service/repair.

G. Training

1. All sworn employees shall receive initial training during Phase 1 of the Field Training Program.
2. Periodic training will be completed based on updates to policy, procedure, or manufacture recommendations, as needed.

H. BWC Data Retention

1. Data will be maintained in a storage system designated and approved by the Department. All data will be backed up by the storage system vendor.
2. Data will be retained in accordance with applicable law.

I. Public Records Request

1. Public records request shall follow the procedures outlined in General Order 8002.

5700.4 Glossary:

Activation - Any process that causes the BWC system to record audio or video data. Activation will be done manually. Activation can only occur when the BWC is already powered on.

Authorized Personnel - Personnel designated by the Chief or his or her designee, to manage data recorded by the BWC.

Body Worn Camera (BWC) - Portable audio-video recording equipment designed to be worn on a person.

BWC Uploading: The act of transferring recorded data from the BWC to the storage server.

CAD (Computer Aided Dispatch): CAD is the electronic system used to manage law enforcement resources in relation to calls for service.

Deactivation: Any process that causes the BWC system to stop recording. Deactivation can be done manually or can occur accidentally.

Carl A. Metzger
~~Carl A. Metzger, Chief~~
of Police

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of 5



City of Valparaiso
Police Department

~ ~ ~ *Isle of Paradise* ~ ~ ~

465 Valparaiso Parkway, Valparaiso, Florida 32580
Office: (850) 729 - 5400 • Fax: (850) 678 - 8162



Joseph C. Hart, Chief of Police

October 12, 2019

Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5182

Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890

sent via email to: Erickson.Mike@flsenate.gov and Lance.Toliver@myfloridahouse.gov

Dear Sirs:

Please find the requested responses to the "Open Government Sunset Review Questionnaire," which was recently sent to me.

The response, to each question, appears below the respective question, beside a bullet point. Multiple bullet points indicate additional portions of the response. The Valparaiso Police Department's operational policy, governing the wearing and use of body worn cameras, as well as the storage and dissemination of their recordings, has been added hereto and follows the questionnaire responses.

I believe everything contained herein will be clearly understood. However, if additional information or clarification is needed, please feel free to contact me at the number shown above or reply to the email address of this transmittal.

I believe it is imperative that this public records exemption be reenacted.

Sincerely,

Joseph C. Hart

Joseph C. Hart
Chief of Police

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Administration Subcommittee
9/12/2019**

**Open Government Sunset Review Questionnaire
(Information related to Body Cameras)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. A copy of s. 119.071(2)(l), F.S., is appended to the end of the questionnaire for your convenience.

Name of person and agency completing the questionnaire: Joseph C. Hart
Title of person completing the questionnaire: Chief of Police
Telephone number of person completing the questionnaire: 850 – 729 - 5400
E-mail address of person completing the questionnaire: vpd@valp.org

I. Body Cameras

1. Does your agency collect or possess recordings captured through the use of a body camera? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it.
 - Yes.
2. Please provide a copy of your policy and procedures regarding body cameras.
 - Please see the addended document:
Operational Policy # 043: Body Worn Cameras (BWC),
which contains the Valparaiso Police Department’s
operational policy governing the wearing and use of Body Worn Cameras,
by members of the Valparaiso Police Department.
3. If your agency is a law enforcement agency that collects body camera recordings directly from an officer, could you briefly describe the procedures under which the officers operate when using a body camera?
 - All calls for service.
 - Officer-initiated vehicle and/or pedestrian stops.
 - When an individual is taken into custody.
 - Any police response which involves the use of emergency warning lights and/or siren.
 - During field sobriety tests.
 - During crime(s) in progress.
 - Documenting serious accidents, crime scenes, or fires.
 - When handling disabled motor vehicles.
 - While transporting prisoners.
 - Responding to domestic disputes.
 - Responding to neighborhood disputes.
 - Responding to noise complaints.
 - Responding to disorderly conduct.
 - Responding to suspicious persons/vehicles.
 - Responding to riots or civil disturbances.
 - Responding to protests.
 - K-9 incidents, except during explosive Searches.
 - All SWAT Operations.
 - When administering Miranda Warnings in the field.
 - During Searches.

- All mutual aid calls.
 - During any situation or encounter an officer feels a recording would be beneficial in the performance of his/her duties.
4. If your agency has policies or procedures governing the use of body cameras or body camera recordings,
- [see response to previous question]
5. Please briefly describe the process by which you collect or possess the body camera recordings after the recordings have been captured by the law enforcement officer.
- Each officer places his/her camera in a docking station, which is located in the police station, at the end of his/her shift.
 - The video is automatically uploaded to a secure, dedicated, server. If a video is not attached to a case number, the officer may flag any video for indefinite retention, otherwise it is held for 90 days.
 - If the video is attached a case file, it is purged if/when the case is purged, according to records retention laws.
6. In 2018, Florida voters passed Amendment 6 to the Florida Constitution, also known as “Marsy’s law.” The amendment, now contained in Art. I, s. 16(b)-(e), of the Florida Constitution, gives victims of crimes the “right to prevent 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.” Does your agency have a policy outlining the interaction between body camera recordings and Amendment 6? If “yes,” please describe the policy, including but not limited to, information regarding whether your policy prohibits disclosure of any depiction in a body camera recording of an injured or deceased victim.
- All BWC recording releases will be in accordance with applicable laws pertaining to evidence and the Public Records Law of the State of Florida.
 - The Records Unit shall be responsible for the release of such video recordings, upon approval by the Chief of Police.
7. The exemption requires agencies to retain a body camera recording for at least 90 days.
- a. How long does your agency keep such recordings?

- If a video is not attached to a case number, or flagged by the officer for indefinite retention, it is held for 90 days.
- b. Does your agency generally only retain recordings for the statutorily-required 90 day minimum retention period if the recordings are not flagged for use in a criminal case?
- Yes, unless an officer has otherwise flagged it for retention.
- c. Have costs relating to retention been an issue for your agency? If “yes,” what actions have you taken or anticipate taking to reduce such costs?
- Initially, yes. The agency budgeted for the purchase of a dedicated server for this purpose.
 - Thereafter, it has not been a cost burden because the retention and purge policy adequately regulates the storage capacity required.
- d. Do you think the current statutorily-required 90 day minimum retention period is sufficient for persons to obtain access to information covered by the body camera exemption if they are authorized to obtain such access?
- Yes.

II. Public Record Exemption under Review

Section 119.071(2)(l), Florida Statutes, provides a public record exemption for body camera recordings, or a portion thereof, if the recording is taken within the interior of a private residence, in a place that a reasonable person would expect to be private, or within the interior of a facility that offers health care, mental health care, or social services.

1. What does your agency consider to be the “interior of a private residence” pursuant to the public records exemption under review?
 - After crossing the threshold to enter the residence.
2. What does your agency consider to be a “place that a reasonable person would expect to be private”?
 - Inside private residence or hotel room, or inside a treatment center where mentally ill persons are treated.

3. What does your agency consider to be a “facility that offers health care, mental health care, or social services”?

- A hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled [FS 408.32(8)].

4. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations.

- No.

5. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

- No.

6. Has your agency ever received a public records request for any confidential and exempt information?

- No.

If “yes”:

a. What is the approximate number of requests your agency has received for such information each year?

b. Please describe the types of entities requesting such information, if available.

c. Was the information released? If “yes,” please explain.

7. The public record exemption under review provides that the information covered by the exemption may also be obtained pursuant to a court order. How many court orders has your agency received requiring that your agency disclose information covered by the body camera exemption? If available, please provide a copy of one order for disclosure that your agency has received.

- 0.

8. Does any other state or federal law protect recordings obtained through the use of body camera by a law enforcement officer? If "yes":

- No.

a. Please provide the specific state or federal citation for each exemption.

b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.

c. Could the exemption under review be merged with the other exemption(s)?

9. Has your agency received any complaint about the public record exemption? If "yes," please explain.

- No.

10. Does your agency think the exemption has accomplished its purpose of protecting sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to track a person's movements? Please explain.

- Yes.

11. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by a law enforcement agency in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

a. Has your agency disclosed in furtherance of its official duties and responsibilities?

- Yes, the State Attorney's Office in due course of case prosecution.

b. Does your agency share information with another governmental agency in furtherance of that agency's official duties and responsibilities? If "yes," which agencies?

- No.
- c. Is there any other entity with which your agency believes it should be allowed to share the information? If “yes,” which entity?
- No.

Additionally, the exemption allows the information it protects to be disclosed to the following persons:

- A person recorded by the body camera;
- The personal representative of a person recorded by a body camera; and
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully, resided, dwelled, or lodged at the time of the recording.

However, a law enforcement agency may only disclose the portions of the recording that are relevant to those persons.

- a. Has your agency disclosed a body camera recording to any of the above listed persons? If “yes,” approximately how times has your agency disclosed such information?

- No.

- b. Is there any other person with whom your agency believes it should be allowed to share the information?

- No.

12. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
- Reenact the public records exemption as is
- Reenact the public records exemption with changes

13. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

- N/A.

14. Please provide any additional comments regarding the public record exemption under review.

- None.

2019 FLORIDA STATUTES

Public Records Exemption under Review

119.071 General exemptions from inspection or copying of public records.—

(l)1. As used in this paragraph, the term:

- “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
- “Law enforcement officer” has the same meaning as provided in s. 943.10.
- “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

- Is taken within the interior of a private residence;
- Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

- In furtherance of its official duties and responsibilities; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

- To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person’s presence in the recording;
- To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person’s presence in the recording;

- c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
- d. Pursuant to a court order.
 - (I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:
 - (A) Disclosure is necessary to advance a compelling interest;
 - (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
 - (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
 - (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
 - (E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
 - (F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - (G) The recording could be redacted to protect privacy interests; and
 - (H) There is good cause to disclose all or portions of a recording.
 - (II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.
- 5. A law enforcement agency must retain a body camera recording for at least 90 days.
- 6. The exemption provided in subparagraph 2. applies retroactively.
- 7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.
- 8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

ADDENDUM TO QUESTIONNAIRE
VALPARAISO POLICE DEPARTMENT
Operational Policy # 043: Body Worn Cameras (BWC)

I. AUTHORIZATION, VALIDATION, AND OVERVIEW

EFFECTIVE:	19 April 2016
REVIEWED:	2015
RESCINDS:	
REVISED:	19 April 2016
DISTRIBUTION:	All Members
REVIEW RESPONSIBILITY:	Chief of Police
APPROVING AUTHORITY:	Joseph C Hart _____ Chief of Police

II. POLICY

The purpose of this policy is to establish the procedures governing the use, maintenance, and control of the Valparaiso Police Department's Body Worn Cameras (BWCs).

III. PROCEDURE

Sections IV through XIV delineate the procedures to be followed for effective implementation of this policy in achieving the Department's goals and objectives.

IV. PURPOSE

A. The Valparaiso Police Department uses Body Worn Cameras (BWCs) for the purpose of recording video and audio accounts of specific events. The Department recognizes that the captured audio and video may not accurately reflect the perception of the officer wearing the BWC. The technology utilized in BWCs cannot exactly mimic the physiology of an officer at the time. An officer, turning his/her head, focusing his/her vision on a particular object, or experiencing auditory exclusion, might observe something not captured in audio/video recordings. Similarly, an officer might NOT observe something that is captured in audio/video recordings.

B. The use and maintenance of video recordings can be invaluable to law enforcement, for both training and evidentiary purposes. Proper safeguards need to be in effect, which will ensure their non-discriminating use, as well as the proper preservation of evidence that may be obtained through use of the technology.

C. The purpose of the BWC program does not include capturing audio and/or video recordings of the officers' private conversations, strategy or information sharing sessions, meal breaks, and/or tactical preparations.

V. REQUIRED USE AND DEFINITIONS

A. Body Worn Camera (BWC) –

1. Audio/Video recording equipment designed to be worn on an officer's person.

B. All sworn Members of the Valparaiso Police Department are required to comply with both, the intent and the requisites of this policy, for the use and maintenance of the Body Worn Cameras (BWCs). This policy covers any and all recordings of video and audio resulting from use of a BWC.

VI. AUTHORIZED USE

A. The Valparaiso Police Department has adopted the use of BWCs in order to accomplish legitimate police objectives, including, but not limited to:

1. Accurately document events, actions, conditions and statements made during motor vehicle stops, investigative stops, field interviews, arrests, critical incidents, calls for service, and tactical activities.

2. Enhance officer reports, evidence collection, and courtroom testimony.

3. Enhance this agency's ability to review facts leading to probable cause for arrest, arrest/search/seizure/ procedures/techniques, officer/public interaction, and evidence for investigative purposes.

4. Evaluate officers' performance and to ensure compliance with Valparaiso Police Department policies, rules and regulations.

5. Review extraordinary incidents, with both positive and negative outcomes, for training purposes.

B. The BWC will be worn on the outermost garment worn by both uniformed and non-uniformed officers. It will be secured to the uniform using the uniform mount as part of the BWC equipment. The BWC will be positioned high on the center of the chest, at badge level.

C. If a BWC is not functioning properly, it will be taken out of service until the unit is repaired. Any officer with a malfunctioning BWC will submit the unit to the Investigator, along with a repair request, describing the malfunction and how it was discovered. If the unit is damaged, the officer will include an explanation, to the best of his/her knowledge, of how and when the damage occurred. The Investigator will deliver the malfunctioning/damaged unit to the manufacturer for repair or replacement.

D. If a BWC is lost, the assigned officer will immediately notify the Captain of Operations. The Captain of Operations will make immediate notification to the Chief.

E. All uniformed officers will be required to utilize BWCs in accordance with this policy. No uniformed officer will be excused from using a BWC, unless specifically approved, by the Chief of Police or designee. The officer is responsible for utilizing the techniques taught to them, during

the BWC training, to ensure that the BWC is operating properly at the beginning of their tour of duty. Failure to do so may result in disciplinary action.

F. The BWC will be used to record the following events:

1. All calls for service.
2. Officer-initiated vehicle and/or pedestrian stops.
3. When an individual is being taken into custody.
4. Any police response which involves the use of emergency warning lights and/or siren:
 - a) The BWC will be activated before the emergency lights and siren are activated.
 - b) The BWC will not be deactivated until the officer completes his/her assignment at the location.
5. During field sobriety tests.
6. Crime(s) in progress.
7. Documenting serious accidents, crime scenes, or fires.
8. When handling disabled motor vehicles.
9. While transporting prisoners.
10. Responding to domestic disputes.
11. Responding to neighborhood disputes.
12. Responding to noise complaints.
13. Responding to disorderly conduct.
14. Responding to suspicious persons/vehicles.
15. Responding to riots or civil disturbances.
16. Responding to protests.
17. K-9 incidents, except during explosive Searches.
18. All SWAT Operations.
19. When administering Miranda Warnings in the field.
20. During Searches.
21. All mutual aid calls.
22. It should be clearly recognized that the preceding Subsections, 1 through 21, do not comprise an exhaustive or all-inclusive list. Officers should activate the BWC during any situation or encounter they feel would be beneficial in the performance of their duties.

G. It is not necessary to advise a suspect, or by-stander, that the incident is being recorded; however, a confrontational subject may alter his/her demeanor when they learn they are being recorded. Officers are encouraged to reveal that a recording is being made when they believe it will de-escalate a confrontational or hostile situation.

1. BWC operators may utilize the BWC to obtain statements, confessions, utterances, etc.

2. When a BWC operator obtains a video statement, the fact the statement was recorded will be listed in the offense report.

3. When a BWC statement is obtained the BWC operator must have the person identified on the video. This can be done by having the person:

a) Display a government issued identification.

b) State their lawful name and date of birth, prior to the interview.

c) In the case of a juvenile victim, the victim's parent/guardian can provide this information, if necessary.

d) All BWC operators will attempt to have the Interviewee swear or affirm his/her statement is "true and correct."

H. Civilians shall not be allowed to review the recordings.

VII. OFFICER RESPONSIBILITIES

A. Officers will be given training in the use, maintenance, and handling of the BWC. An officer's failure to care for an assigned BWC, in accordance with this training, may result in disciplinary action.

B. Intentional damage to, or loss of, a BWC will result in disciplinary action. All damage to, or any loss of, a BWC will be reported and investigated. If the damage or loss is determined to be the result of recklessness, the responsible officer may receive disciplinary action. An officer will not face disciplinary action for accidental, or unavoidable, damage or loss.

C. Officers will prepare the deployment of the BWC at the beginning of their shift, as well as secure it at the end of their shift, in accordance with their training and Departmental policy.

D. If any of the BWC's functions do not operate properly at any time during the shift, the Officer will immediately notify the Investigator or Captain of Operations, to receive a temporary replacement and document the problem on an Equipment Defect Report.

E. Officers shall ensure that the equipment is operating in a way which will allow for the recording of enforcement actions. No uniform pieces or equipment, including ties, shirts, and jackets, will be worn in a manner that will interfere with video and/or audio recording of incidents.

F. Officers are encouraged to notify the Captain of Operations after recording an incident or encounter that will provide valuable training, if reviewed by other officers.

G. If an officer is suspected of wrong doing, or associated with an officer-involved shooting - or other serious use of force - event, the Department reserves the right to limit an officer from viewing the video file.

VIII. ACTIVATION and DEACTIVATION

A. Officers will activate their BWCs when:

1. Upon commencing response to a call for service; or
2. Upon observing a violation or incident for which the officer intends to take action, the officer will immediately activate the BWC.

B. BWCs will be activated by all officers responding to the scene of an incident, whether acting as the primary officer or in the capacity of a back-up officer.

C. The BWC shall not be deactivated until the enforcement action or encounter is completed, unless one of the following conditions apply:

1. The officer has no contact with any victim, witness, suspect, or other principal, and the camera is not in any position to record any relevant part of the incident.
2. The officer has received supervisory permission to stop recording.
3. Any time prior to deactivating the BWC, officers shall record their intention to deactivate along with the reason for the deactivation.
4. Officers may cease recording when they are not in direct contact with a victim, witness, suspect, or bystander AND/OR they are conferring on a tactical or investigative strategy.
 - a. In the event that a citizen contact is established, or an interview with a victim/witness is conducted, the BWC will be activated.
 - b. While the BWC is deactivated, the BWC on another officer - who is not involved in the strategy meeting - must continue recording, to ensure the entire incident is documented.
 - c. All officers, involved in the strategy meeting, will reactivate their BWCs at the conclusion of the meeting.

D. Officers will activate the BWC before transporting prisoners, suspects, victims, or witnesses.

E. BWC deactivation may occur during non-enforcement activities, such as: protecting accident scenes, directing traffic, etc. The BWC will be immediately reactivated at the commencement of any violent, confrontational, argumentative, or accusatory interaction.

F. When an unforeseen physical confrontation or other dangerous situation occurs at the time when an officer would not normally be required to have his/her BWC activated, the officer will activate the BWC as soon as he/she can SAFELY do so. Officers are not authorized to jeopardize their own safety in order to activate their BWC.

G. Failing to activate the BWC, or any deactivation of the BWC during an incident, regardless of whether or not the decision is justified, must be documented in the officer's report, along with an explanation for the failure to activate or the reason for the deactivation.

H. Violations of policy will be reviewed by the Chief of Police, to determine if disciplinary action is appropriate.

IX. RESTRICTIONS

A. Activation of a BWC is authorized when:

1. a person making a report at the Front Desk or in the Interview room,
2. a citizen or arrestee becomes confrontational, argumentative, accusatory or violent toward the officer, or
3. the officer feels it would be beneficial in/to the performance of his/her duty.

B. BWCs shall not be used to make recordings in places where there is a reasonable expectation of privacy (e.g.; bathrooms, locker rooms, etc.), while not in the performance of official duties, while conducting personal activities, or during personal work breaks.

C. The BWC must be deactivated during any conversations with confidential informants, or during the recruitment of such confidential sources.

D. Any officer working in an undercover capacity will not be required to wear a BWC.

E. Officers should avoid capturing video recordings of other officers who are working in an undercover capacity.

X. DATA SECURITY and ACCESS CONTROL

A. All BWC recordings will be maintained only on the secure servers.

B. All BWC data uploads will be done on Department servers.

C. The Chief of Police, Captain of Operations, and Investigator will have access to view all BWC recordings.

D. Officers will request DVD copies of videos, captured on their BWCs, which they believe contain evidence that is likely to aid in a criminal prosecution or in a civil action brought against the Valparaiso Police Department. The requests for DVDs will be made through the Investigator. The DVDs will be entered into evidence in accordance with the Evidence and Property Control policy.

E. Authorized "system administrators" will have access to the BWC recordings, for the purpose of system maintenance.

F. Videos, not being held as evidence, may be used for training, with the approval of the Chief of Police or designee.

G. Videos, being held as evidence, can only be used for training purposes, with approval from the Chief of Police.

H. Authorized Officers will each have his/her own username and password.

1. Officers are only authorized to review videos of their own actions for the purposes of preparing reports and evaluating personal performance.

2. With the permission of their supervisor, Officers may request to view videos of other officers who are/have been directly involved with their investigation.

3. After completing a BWC video review session, the Officer will log out from his/her account, so that no one else may access the system, under his/her username.

4. Officers are not permitted to delete and/or edit the video itself. Intentional attempts to do so will be reported and investigated in accordance with the Internal Affairs Policy.

I. No recordings, directly or indirectly taken from BWCs, will be distributed or displayed to a member of the public, without the authorization of the Chief of Police. No personal copies shall be made.

J. The review of a video with a member of the public, for internal affairs purposes, required the authorization of the Chief of Police.

XI. VIDEO EVIDENCE

Videos, needed for evidence in court, must be requested, through the Department's Evidence Custodian or the Captain of Operations, at the time of the report. Use the CD form and note that it is on Martel Body Cam Server.

XII. RELEASE OF BWC VIDEO/AUDIO RECORDINGS

A. All BWC recording releases will be in accordance with applicable laws pertaining to evidence and the Public Records Law of the State of Florida.

B. The Records Unit shall be responsible for the release of such video recordings, upon approval by the Chief of Police.

XIII. QUALITY ASSUARANCE

A. To ensure quality, BWC recordings will be subject to review and monitoring.

B. The Investigator, or Captain of Operations, will be responsible for reviewing and monitoring BWC recordings, to:

1. ensure compliance with policies,
2. and identify deficiencies that can be addressed with training, and
3. take any appropriate corrective action/disciplinary action.

C. Due to time constraints, it is impossible for the Investigator or Captain of Operations to watch every video generated by the Department's BWCs.

1. At least one video, from every officer, will be reviewed each month.
2. The Captain of Operations will make periodic reviews based on necessity and availability.

XIV. VIDEO PURGE and RETENTION

In compliance with the State of Florida Records Retention Schedule and Department rules, video will be automatically purged from the server no later than twelve (12) months from the date of download. The only exception will be that video which has been flagged for indefinite retention.

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 Criminal Justice

BILL: SPB 7034

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Location Information

DATE: January 14, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cox	Jones		CJ Submitted as Comm. Bill/Fav

I. Summary:

SPB 7034 saves from repeal the public record exemptions in ss. 409.1678 and 787.06, F.S., relating to location information of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity, respectively.

Safe houses and safe foster homes are certified by the Department of Children and Families (DCF) to care for sexually exploited children. Safe houses and safe foster homes must provide a safe, separate, and therapeutic environment tailored to the needs of specified commercially sexually exploited children who have endured significant trauma.

Current law provides public record exemptions for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity. However, the information may be provided to any agency in order to maintain health and safety standards and to address emergency situations.

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. This bill removes this repeal language.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

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 the statutory provisions are 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., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ 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.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Human Trafficking

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.²⁷ An estimated 40.6 million persons were the victims of human trafficking in 2016, with one in four victims being children.²⁸ Human traffickers use various techniques to instill fear in victims, including violence, threats, deception, or keeping

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 787.06(1)(a), F.S. Further, s. 787.06(2)(d), F.S., defines the term "human trafficking" to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

²⁸ International Labour Organization, *Forced labour, modern slavery and human trafficking*, available at <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited December 17, 2019).

victims under lock and key.²⁹ Other practices frequently used include isolating victims from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling the victims' funds by holding the money.³⁰ It is estimated that human trafficking generates \$150 billion dollars in illegal profits a year.³¹

Residential Treatment for Certain Victims of Human Trafficking

Safe Houses

A "safe house" is a group residential placement certified by the Department of Children and Families (DCF) to care for sexually exploited children.³² Safe houses must provide safe, separate, and therapeutic environments tailored to the needs of commercially sexually exploited children who have endured significant trauma and are not eligible for relief and benefits under the federal Trafficking Victims Protection Act.³³ Safe houses must:

- Use strength-based and trauma informed approaches to care;
- Serve exclusively one sex;
- Group child victims by age or maturity level;
- Care for child victims in a manner that separates them from children with other needs;
- Have staff members who are awake and on duty 24 hours a day; and
- Provide appropriate security for the facility through specified means.³⁴

Additionally, safe houses serving children who have been sexually exploited must conduct a comprehensive assessment of the needs of each resident and provide a variety of services to meet such needs, including, in part:

- Victim-witness and family counseling;
- Behavioral health care;
- Treatment and intervention for sexual assault;
- Life skills and workforce training;
- Mentoring by a survivor of commercial sexual exploitation if available; and
- Substance abuse screening.³⁵

Safe houses are inspected by DCF prior to certification and annually thereafter.³⁶

²⁹ The Polaris Project, *The Facts*, available at <https://polarisproject.org/human-trafficking/facts> (last visited December 17, 2019).

³⁰ *Id.*

³¹ International Labour Organization, *Profits and Poverty: The Economics of Forced Labour*, available at http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm (last visited December 17, 2019).

³² Section 409.1678(1)(b), F.S.

³³ Section 409.1678(2)(a), F.S.

³⁴ Section 409.1678(2)(c), F.S. Safe houses must also be licensed under s. 409.175, F.S.

³⁵ Section 409.1678(2)(d), F.S.

³⁶ Section 409.1678(2)(f), F.S.

Safe Foster Homes

A “safe foster home” is a family foster home certified by DCF to care for sexually exploited children.³⁷ The state requires safe foster homes provide the same services and meet the same requirements as safe houses, except the requirement to have staff awake and on duty 24 hours a day does not apply.³⁸

Additional Residential Facilities

Traditional residential facilities serve both children and adults who are victims of sexual exploitation. If these facilities serve adults, they cannot be designated safe houses or safe foster homes.³⁹

Public Records Exemption Under Review

In 2015, the Legislature created public record exemptions for information about the location of safe houses, safe foster homes, residential facilities serving victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking. Specifically, the information regarding the location of these facilities held by an agency is confidential and exempt from public records requirements. However, the confidential and exempt information may be provided to any agency as necessary to maintain health and safety standards and to address emergency situations in the residential facility. The public record exemptions do not apply to facilities licensed by the Agency for Health Care Administration.⁴⁰

The 2015 public necessity statement⁴¹ for the exemptions provides that:

Safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation . . . or adult victims of human trafficking involving commercial sexual activity, are intended as refuges for sexually exploited victims from those who exploited them. If the individuals who victimized these people were able to learn the location of such facilities, they may attempt to contact their victims, exploit their vulnerabilities, and return them to the situations in which they were victimized. Even without the return of these victims to their former situations, additional contact with those who victimized them would have the effect of continuing their victimization and inhibiting their recoveries. Additionally, knowledge about the location of safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation . . . or adult victims of human trafficking involving commercial sexual activity, could enable other individuals to locate and attempt to victimize the residents.⁴²

³⁷ Section 409.1678(1)(a), F.S.

³⁸ Section 409.1678(2)(c)5., F.S.

³⁹ Section 409.1678(1)(a) and (b), F.S. The definitions of “safe foster home” and “safe house” are specifically restricted to “sexually exploited children.”

⁴⁰ Chapter 2015-147, L.O.F., codified as ss. 409.1678(6) and 787.06(9), F.S.

⁴¹ FLA. CONST. art. I, s. 24(c), requires each public record exemption state with specificity the public necessity justifying the exemption.

⁴² Chapter 2015-147, L.O.F.

During the 2019 interim, Committee staff met with staff from DCF and the Department of Legal Affairs (DLA) to discuss the exemptions as part of the review process. DCF, the entity which certifies safe houses and safe foster homes, stated that as of 2019 there were seven safe houses and 28 safe foster homes operating in the state. DCF and DLA staff indicated that they have not received any complaints concerning the exemptions nor did they encounter issues in implementing the exemptions. Neither agency was aware of any litigation involving the exemptions. DCF and DLA recommended the exemptions be reenacted as is.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal date of the public record exemptions, thereby maintaining the exemptions for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity.

The bill is effective October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting 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 newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

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 public records exemption appears to be a reasonable measure to prevent release of information about the location of safe houses, safe foster homes, other residential

facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.1678 and 787.06.

⁴³ Section 119.07(2) and (4), F.S.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

FOR CONSIDERATION By the Committee on Criminal Justice

591-01439-20

20207034pb

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 409.1678, F.S.;
 4 abrogating the scheduled repeal of provisions relating
 5 to location information of specified places that serve
 6 child victims of commercial sexual exploitation;
 7 amending s. 787.06, F.S.; abrogating the scheduled
 8 repeal of provisions relating to location information
 9 of residential facilities that offer services for
 10 certain victims of human trafficking; providing an
 11 effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (6) of section 409.1678, Florida
 16 Statutes, is amended to read:
 17 409.1678 Specialized residential options for children who
 18 are victims of commercial sexual exploitation.—
 19 (6) LOCATION INFORMATION.—
 20 (a) Information about the location of a safe house, safe
 21 foster home, or other residential facility serving child victims
 22 of commercial sexual exploitation, as defined in s. 409.016,
 23 which is held by an agency, as defined in s. 119.011, is
 24 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 25 of the State Constitution. This exemption applies to such
 26 confidential and exempt information held by an agency before,
 27 on, or after the effective date of the exemption.
 28 (b) Information about the location of a safe house, safe
 29 foster home, or other residential facility serving child victims

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 of commercial sexual exploitation, as defined in s. 409.016, may
 31 be provided to an agency, as defined in s. 119.011, as necessary
 32 to maintain health and safety standards and to address emergency
 33 situations in the safe house, safe foster home, or other
 34 residential facility.
 35 (c) The exemptions from s. 119.07(1) and s. 24(a), Art. I
 36 of the State Constitution provided in this subsection do not
 37 apply to facilities licensed by the Agency for Health Care
 38 Administration.
 39 ~~(d) This subsection is subject to the Open Government~~
 40 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 41 ~~repealed on October 2, 2020, unless reviewed and saved from~~
 42 ~~repeal through reenactment by the Legislature.~~
 43 Section 2. Subsection (10) of section 787.06, Florida
 44 Statutes, is amended to read:
 45 787.06 Human trafficking.—
 46 (10) (a) Information about the location of a residential
 47 facility offering services for adult victims of human
 48 trafficking involving commercial sexual activity, which is held
 49 by an agency, as defined in s. 119.011, is confidential and
 50 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 51 Constitution. This exemption applies to such confidential and
 52 exempt information held by an agency before, on, or after the
 53 effective date of the exemption.
 54 (b) Information about the location of a residential
 55 facility offering services for adult victims of human
 56 trafficking involving commercial sexual activity may be provided
 57 to an agency, as defined in s. 119.011, as necessary to maintain
 58 health and safety standards and to address emergency situations

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20207034pb

59 in the residential facility.

60 (c) The exemptions from s. 119.07(1) and s. 24(a), Art. I
61 of the State Constitution provided in this subsection do not
62 apply to facilities licensed by the Agency for Health Care
63 Administration.

64 ~~(d) This subsection is subject to the Open Government~~
65 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
66 ~~repealed on October 2, 2020, unless reviewed and saved from~~
67 ~~repeal through reenactment by the Legislature.~~

68 Section 3. This act shall take effect October 1, 2020.

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 Criminal Justice

BILL: SPB 7038

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Information Held by an Investigative Agency

DATE: January 14, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Erickson</u>	<u>Jones</u>	_____	CJ Submitted as Comm. Bill/Fav

I. Summary:

SPB 7038 saves from repeal and retains a public records exemption in s. 895.06(7), F.S., relating to investigative information. Section 895.06(7), F.S., makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., which specifies prohibited racketeering activity.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal. The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill removes this repeal language.

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 newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests for the investigative information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2020.

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 the statutory provisions are 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., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ 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.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Florida RICO Act

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S. “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.²⁷

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s 1961(1).

Section 895.03, F.S., provides that it is unlawful for any person:

- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

Section 895.04, F.S., punishes as a first degree felony²⁸:

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²⁹ to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;³⁰
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.³¹

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.³²

²⁸ A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁹ Section 895.02(2), F.S., defines an “unlawful debt” as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

³⁰ Section 895.02(3), F.S., defines “enterprise” as any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

³¹ Section 895.03(4), F.S.

³² Section 895.05(2), F.S.

RICO Investigative Subpoenas

Under s. 895.06, F.S., an investigative agency³³ may, during the course of an investigation into civil violations of the Florida RICO Act, subpoena witnesses and material if the agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of the act.³⁴ “The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred.”³⁵

A subpoena is confidential for 120 days after the date of its issuance, and the subpoenaed person or entity may not disclose the existence of the subpoena to any person other than the attorney for the subpoenaed person or entity during the 120-day period.³⁶

The investigative agency may apply ex parte to the circuit court for the circuit in which a subpoenaed person or entity resides, is found, or transacts business for an order directing that the subpoenaed person or entity not disclose the existence of the subpoena to any other person or entity except the attorney for the subpoenaed person or entity for an additional period of time for good cause shown by the investigative agency.³⁷

The investigative agency may seek a court order for noncompliance with the subpoena and may stipulate to protective orders with respect to documents and information submitted in response to a subpoena.³⁸ A person’s failure to comply with a court order issued pursuant to s. 895.06, F.S., may be punished as contempt of court.³⁹

Public Records Exemption for Florida RICO Investigative Information

Section 895.06(7), F.S., which was created in 2015,⁴⁰ makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., which specifies prohibited racketeering activity.⁴¹

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.⁴² The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.⁴³ An investigation

³³ Section 895.02(7), F.S., defines “investigative agency” as the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

³⁴ Section 895.06(1), F.S.

³⁵ *Check ‘N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001), *review denied* 817 So.2d 845 (Fla. 2002).

³⁶ Section 895.06(2), F.S.

³⁷ *Id.*

³⁸ Section 895.06(4) and (6), F.S.

³⁹ Section 895.06(5), F.S.

⁴⁰ Chapter 2015-99, L.O.F.

⁴¹ *See* s. 895.06(7)(a), F.S.

⁴² Section 895.06(7)(b), F.S.

⁴³ Section 895.06(7)(c), F.S.

is considered complete once the investigative agency either files an action or closes its investigation without filing an action.⁴⁴

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁵

The statement of public necessity for creation of the exemption provides the following reasons for creating the exemption:

- Because a Florida RICO Act investigation conducted by an investigative agency may lead to the filing of a civil action, the premature release of the information held by such investigative agency could frustrate or thwart the investigation and impair the ability of the investigative agency to effectively and efficiently administer its duties under the act;
- The exemption protects the reputation of the potential defendant in the event the investigation is closed without the filing of a civil action; and
- Without the exemption, a potential defendant under the Florida RICO Act may learn of the investigation and dissipate his or her assets and thwart any future enforcement action under the act.⁴⁶

Legislative Survey Regarding the Public Records Exemption for Florida RICO Investigation Information

Staff received responses from the Department of Legal Affairs (DLA) and the state attorney offices in the 15th and 20th Judicial Circuits to a joint survey of the House Oversight, Transparency and Public Management Subcommittee and the Senate Committee on Criminal Justice regarding the public records exemption for Florida RICO investigation information. Both offices recommended retaining the exemption without changes.⁴⁷

Between July 1, 2015, and August 1, 2019, the DLA initiated five RICO investigations, of which three have been completed. During the same time period, the state attorney office in the 15th Judicial Circuit initiated and completed a minimum of 16 RICO investigations, and the state attorney office in the 20th Judicial Circuit initiated and completed approximately five RICO investigations.⁴⁸

III. Effect of Proposed Changes:

The bill saves from repeal and retains a public records exemption in s. 895.06(7), F.S., relating to investigative information. Section 895.06(7), F.S., makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., which specifies prohibited racketeering activity.

⁴⁴ Section 895.06(7)(d), F.S.

⁴⁵ Section 895.06(7)(e), F.S.

⁴⁶ Chapter 2015-99, L.O.F.

⁴⁷ The survey responses are on file with Senate Committee on Criminal Justice.

⁴⁸ *Id.*

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal. The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill removes this repeal language.

The bill takes effect on October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Voting 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 newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

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 public records exemption appears to be a reasonable measure to prevent premature release of RICO investigative information that could frustrate or thwart the investigation and thwart future RICO enforcement actions. Further, the RICO investigative information only remains confidential and exempt until all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Costs incurred by an agency in responding to public records requests for the investigative information should be offset by authorized fees.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 895.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

⁴⁹ Section 119.07(2) and (4), F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

FOR CONSIDERATION By the Committee on Criminal Justice

591-01028-20

20207038pb

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 895.06, F.S., relating
 4 to an exemption from public records requirements for
 5 information held by an investigative agency pursuant
 6 to an investigation relating to an activity prohibited
 7 under the Florida RICO Act; removing the scheduled
 8 repeal of the exemption; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (7) of section 895.06, Florida
 13 Statutes, is amended to read:

14 895.06 Civil investigative subpoenas; public records
 15 exemption.-

16 (7) (a) Information held by an investigative agency pursuant
 17 to an investigation of a violation of s. 895.03 is confidential
 18 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 19 Constitution.

20 (b) Information made confidential and exempt under
 21 paragraph (a) may be disclosed by the investigative agency to:

22 1. A government entity in the performance of its official
 23 duties.

24 2. A court or tribunal.

25 (c) Information made confidential and exempt under
 26 paragraph (a) is no longer confidential and exempt once all
 27 investigations to which the information pertains are completed,
 28 unless the information is otherwise protected by law.

29 (d) For purposes of this subsection, an investigation is

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-01028-20

20207038pb

30 considered complete once the investigative agency either files
 31 an action or closes its investigation without filing an action.

32 ~~(c) This subsection is subject to the Open Government~~
 33 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 34 ~~repealed on October 2, 2020, unless reviewed and saved from~~
 35 ~~repeal through reenactment by the Legislature.~~

36 Section 2. This act shall take effect October 1, 2020.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Public Management Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to RICO Investigations)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 895.06(7), Florida Statutes, provides a public record exemption for information held by the Department of Legal Affairs, the Office of Statewide Prosecution, and the office of each state attorney pursuant to an investigation of a violation of s. 895.03, F.S., a provision of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, which prohibits a person from receiving, with criminal intent, proceeds derived from a pattern of racketeering activity or through the collection of unlawful debt for various purposes. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 895.06(7) and s. 895.03, F.S., are appended to the end of the questionnaire for your convenience.

**Name of person and agency completing the questionnaire: [Brian Fernandes](#)
Title of person completing the questionnaire: [Assistant State Attorney](#)
Telephone number of person completing the questionnaire: [561-355-7336](#)
E-mail address of person completing the questionnaire: bfernandes@sa15.org**

I. Offenses concerning Racketeering and Illegal Debts

1. Has your agency ever collected or possessed any information held pursuant to an investigation of a violation of s. 895.03, F.S., of the Florida RICO Act (RICO Investigation)? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it. [YES](#)

2. Please briefly describe how such a RICO investigation is typically conducted from inception to completion. The manner in which a RICO investigation and prosecution is conducted depends heavily on the criminal enterprise which conducts the racketeering activity. One area in which my experience is largely based deals with using RICO laws to combat criminal street gangs. In order to adequately investigate such a case, a full background should be conducted on all suspected members and associates of the gang. This will include obtaining information on all crimes committed and alleged, all interactions with law enforcement, all documents related to periods of incarceration and any time in which multiple members of the enterprise may have been together. Additionally, evidence related to social media and all forms of communication will also be researched and obtained. Interviews will be conducted and attempts at proactive criminal investigative work will be attempted. In short, a thorough retroactive and proactive investigation will be completed. Given that some of the cases encompass a ten year period of racketeering, the materials are expected to be quite voluminous.
3. What is the average time frame for your agency to complete a RICO investigation? In Gang RICO types of cases, the investigation itself will take anywhere from one to two years. However, the investigation absolutely continues during the prosecution of the case, which can take up to an additional five years after charges are filed.
4. How many RICO investigations were initiated and completed from July 1, 2015, the effective date of the public record exception, to August 1, 2019. (Please exclude investigations that were initiated prior to July 1, 2015 and investigations completed after August 1, 2019). A minimum of 16.
 - a. How many of those completed investigations were filed with a court or other tribunal for adjudication? 16
 - b. How many of those completed investigations were closed without further action? We do not have an accurate number as we primarily track cases once they are filed with our office. There have been multiple investigations in which our office has participated that did not evolve into a charged RICO case. Other charges most likely were filed in many of those cases aside from RICO.
5. How long does your agency retain the exempt information? As per the general retention periods set by the State.

II. Public Record Exemption under Review

Section 895.06(7), F.S., provides a public record exemption for information held by the Department of Legal Affairs, the Office of Statewide Prosecution, and any state attorney pursuant to an investigation of a violation of s. 895.03, F.S., of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. The Florida RICO Act makes it illegal for any person who has, with criminal intent, received any proceeds derived from a pattern of racketeering activating or through the collection of an unlawful debt to:

- Use or invest any part of such proceeds in the acquisition of any title to, or any right, interest, or equity in, real property or the establishment or operation of any enterprise; or
- Acquire or maintain any interest in or control of any enterprise or real property.

The Florida RICO Act also makes it illegal for any person employed by, or associated with, any enterprise to conduct or participate in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt. Lastly, the Act makes it unlawful for any person to conspire or endeavor to violate any of its provisions.

The information protected by the exemption ceases to be exempt once all investigations to which the information pertains are completed. An investigation is complete once the agency either files an action or closes its investigation without filing an action.

1. What information or types of information does your agency consider to be exempt pursuant to the public records exemption under review? [All information related to the investigation.](#)
2. Has the public records exemption under review ever been the subject of litigation? If “yes,” please explain and provide the appropriate case citations. [NO.](#)
3. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. [NO.](#)
4. Has your agency ever received a public records request for any confidential and exempt information? If “yes”: [YES.](#)
 - a. What is the approximate number of requests your agency has received for such information each year? [This is a large number.](#)
 - b. Please describe the types of entities requesting such information, if available. [Media makes up the bulk of the requests.](#)
 - c. Was the information released? If “yes,” please explain. [NO.](#)

5. Does any other state or federal law protect investigative information relating to offenses under the Florida RICO Act? If "yes": **YES**.
 - a. Please provide the specific state or federal citation for each exemption. **119.071(2)**
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)? **No position at this time.**
6. Has your agency received complaints about the public record exemption? If "yes," please explain. **NO**.
7. Does your agency think the exemption has accomplished its purpose of preventing the frustration or thwarting of a RICO investigation by the premature release of investigative information? Please explain. **YES**.
8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by your agency to a government entity in the performance of its official duties or to a court or tribunal.
 - a. Does your agency share information with another government entity? If "yes," which entities? **YES, law enforcement agencies.**
 - b. Is there other any entity with which your agency believes it should be sharing the information? If "yes," which entities? **NO**.
9. Which of the following actions does your agency recommend the Legislature take (Please select one):
 - Repeal the public records exemption
 - Reenact the public records exemption as is
 - Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).
11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

895.06 Civil investigative subpoenas; public records exemption.—

(7)(a) Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to:

1. A government entity in the performance of its official duties.
2. A court or tribunal.

(c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

(d) For purposes of this subsection, an investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

895.03 Prohibited activities and defense.—

- (1) It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- (2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- (3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- (4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

**The Senate Committee on Criminal Justice
The House Oversight, Transparency & Public Management Subcommittee
12/19/2019**

**Open Government Sunset Review Questionnaire
(Information related to RICO Investigations)**

PLEASE PROVIDE A RESPONSE BY SEPTEMBER 20, 2019, TO:

**Mike Erickson
Senate Committee on Criminal Justice
Erickson.Mike@flsenate.gov
(850) 487-5192**

**Lance Toliver
House Oversight, Transparency & Public
Management Subcommittee
Lance.Toliver@myfloridahouse.gov
(850) 717-4890**

Section 895.06(7), Florida Statutes, provides a public record exemption for information held by the Department of Legal Affairs, the Office of Statewide Prosecution, and the office of each state attorney pursuant to an investigation of a violation of s. 895.03, F.S., a provision of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, which prohibits a person from receiving, with criminal intent, proceeds derived from a pattern of racketeering activity or through the collection of unlawful debt for various purposes. The public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

To assist professional committee staff as part of their review of the public record exemption, please respond to the questions below. Copies of s. 895.06(7) and s. 895.03, F.S., are appended to the end of the questionnaire for your convenience.

**Name of person and agency completing the questionnaire:
Title of person completing the questionnaire:
Telephone number of person completing the questionnaire:
E-mail address of person completing the questionnaire:**

Name and title of the person completing the questionnaire	Patricia Gleason Special Counsel for Open Government Office of the Attorney General
Telephone number and email address of the person completing the questionnaire	Ph. 850-245-0140 Email: Pat.Gleason@myfloridalegal.com

Date questionnaire was completed	September 19, 2019
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I. Offenses concerning Racketeering and Illegal Debts

1. Has your agency ever collected or possessed any information held pursuant to an investigation of a violation of s. 895.03, F.S., of the Florida RICO Act (RICO Investigation)? If “no,” please return this questionnaire immediately. If “yes,” please complete the remainder of the questionnaire before returning it.

Yes.

2. Please briefly describe how such a RICO investigation is typically conducted from inception to completion.

RICO investigations generally begin with information about a potential violation either through a complaint to our office or a news report. Then, our office will investigate informally to determine whether there is sufficient information to justify issuing a subpoena. If it is determined that it is warranted, a subpoena will be issued pursuant to the Florida RICO Act. At that point, third parties and/or the potential subject of the investigation will be asked to produce documents and/or appear for testimony. After reviewing documents and/or taking testimony, the office will determine whether the evidence is sufficient to file a complaint. If there is not sufficient evidence to justify filing a complaint, the investigation will conclude. If there is sufficient evidence, then a complaint will be filed against the subject for violations of the Florida RICO Act.

3. What is the average time frame for your agency to complete a RICO investigation?

There is no standard time frame for completing a RICO investigation, but the average time is approximately 12-24 months if a subpoena is issued.

4. How many RICO investigations were initiated and completed from July 1, 2015, the effective date of the public record exception, to August 1, 2019. (Please exclude investigations that were initiated prior to July 1, 2015 and investigations completed after August 1, 2019).

There were 5 civil RICO investigations initiated during this time period, and 3 of those RICO investigations have been completed.

- a. How many of those completed investigations were filed with a court or other tribunal for adjudication?

Two completed civil investigations have been filed with a court for adjudication.

- b. How many of those completed investigations were closed without further action?

One civil investigation has been closed without further action.

5. How long does your agency retain the exempt information?

Our agency retains the exempt information according to the schedules for document retention in the Florida Administrative Code.

II. Public Record Exemption under Review

Section 895.06(7), F.S., provides a public record exemption for information held by the Department of Legal Affairs, the Office of Statewide Prosecution, or any state attorney pursuant to an investigation of a violation of s. 895.03, F.S., of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. The Florida RICO Act makes it illegal for any person who has, with criminal intent, received any proceeds derived from a pattern of racketeering activity or through the collection of an unlawful debt to:

- Use or invest any part of such proceeds in the acquisition of any title to, or any right, interest, or equity in, real property or the establishment or operation of any enterprise; or
- Acquire or maintain any interest in or control of any enterprise or real property.

The Florida RICO Act also makes it illegal for any person employed by, or associated with, any enterprise to conduct or participate in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt. Lastly, the Act makes it unlawful for any person to conspire or endeavor to violate any of its provisions.

The information protected by the exemption ceases to be exempt once all investigations to which the information pertains are completed. An investigation is complete once the agency either files an action or closes its investigation without filing an action.

1. What information or types of information does your agency consider to be exempt pursuant to the public records exemption under review?

All materials received pursuant to a RICO investigation are considered to be exempt pursuant to this public records exemption.

2. Has the public records exemption under review ever been the subject of litigation? If "yes," please explain and provide the appropriate case citations.

The Department is unaware of any litigation relating to the exemption.

3. Can the confidential and exempt information be readily obtained by alternative means? If "yes," please explain.

Most of the information provided to the department in a RICO investigation is not available to the public. However, some general information may be publicly available through news articles or other public reporting.

4. Has your agency ever received a public records request for any confidential and exempt information? If "yes":

Yes.

- a. What is the approximate number of requests your agency has received for such information each year?

Our agency has received three requests for confidential information from a civil RICO investigation during the relevant time period.

- b. Please describe the types of entities requesting such information, if available.

News media and a law firm have requested such information.

- c. Was the information released? If "yes," please explain.

Confidential RICO investigative information was not released.

5. Does any other state or federal law protect investigative information relating to offenses under the Florida RICO Act? If "yes":

No.

- a. Please provide the specific state or federal citation for each exemption.
 - b. Please explain which exemption your agency relies upon when responding to a public records request that would include the exempt information.
 - c. Could the exemption under review be merged with the other exemption(s)?
6. Has your agency received complaints about the public record exemption? If “yes,” please explain.

No.

7. Does your agency think the exemption has accomplished its purpose of preventing the frustration or thwarting of a RICO investigation by the premature release of investigative information? Please explain.

Yes, our agency thinks the exemption has accomplished its purpose of preventing the frustration or thwarting of a RICO investigation by the premature release of investigative information. If the subject of a RICO investigation was able to prematurely obtain RICO investigative materials, then it could compromise the investigation.

8. The public record exemption under review makes the information it protects confidential and exempt which forbids an agency from sharing the information with any entity other than those authorized in the exemption itself. The exemption under review allows the information it protects to be disclosed by your agency to a government entity in the performance of its official duties or to a court or tribunal.
- a. Does your agency share information with another government entity? If “yes,” which entities?

Our agency will sometimes share information with other State Attorney General Offices and other state and federal agencies when working on joint investigations. To date, our agency has not shared any confidential information with any other state or federal agency in connection with a civil RICO investigation initiated since July 1, 2015.

- b. Is there other any entity with which your agency believes it should be sharing the information? If “yes,” which entities?

No.

9. Which of the following actions does your agency recommend the Legislature take (Please select one):

- Repeal the public records exemption
 Reenact the public records exemption as is
 Reenact the public records exemption with changes

10. If you selected the “reenact the public records exemption with changes” option above, please explain what changes your agency recommends. (You may also provide proposed amendatory language consistent with any change you recommend).

11. Please provide any additional comments regarding the public record exemption under review.

2019 FLORIDA STATUTES

Public Records Exemption under Review

895.06 Civil investigative subpoenas; public records exemption.—

(7)(a) Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to:

1. A government entity in the performance of its official duties.
 2. A court or tribunal.
- (c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.
- (d) For purposes of this subsection, an investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.
- (e) This subsection is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

895.03 Prohibited activities and defense.—

- (1) It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- (2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- (3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- (4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).



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DAVE WILSON

Senior Editor, *The Miami Herald*

July 22, 2019

The Honorable Blaise Ingoglia, Chair
House State Affairs Committee
Florida House of Representatives
402 S. Monroe Street, Room 209 HOB
Tallahassee, FL 32399-1100

The Honorable Ed Hooper, Chair
Senate Governmental Oversight & Accountability Committee
The Florida Senate
404 S. Monroe Street, Room 330 Knott Building
Tallahassee, FL 32399-1300

Re: Exemptions Subject to Open Government Sunset Review - 2020

Dear Representative Ingoglia and Senator Hooper:

The First Amendment Foundation has conducted its annual review of the exemptions from public records and meetings requirements subject to review and repeal under the Open Government Sunset Review Act during the 2020 legislative session. Our comments on each follow below.

Section 119.071(2)(h), Human Trafficking Victims: This public record exemption for information revealing the identity of human trafficking victims under the age of 18 contained in criminal intelligence and criminal investigative records is sufficiently narrow and the First Amendment Foundation doesn't object to its reenactment as currently drafted.

Section 119.071(2)(l), Body Camera Videos: The FAF opposed the passage of this exemption for body camera videos taken in certain locations as originally filed. Our policy concerns were mostly addressed in subsequent amendments but we objected to the bill's passage on procedural grounds – there was no House companion to the Senate bill. However, since its passage, we have not received any complaints about the exemption, and we do not object to reenactment of the exemption in its current limited form.

Section 119.071(5)(k), Home Addresses – Military Personnel: This public record exemption for the home address of current or former U.S. military personnel who served after 9/11 is deeply flawed, both in terms of public policy and practical application. The exemption is under-inclusive in that it fails to protect those military personnel who saw combat in the Gulf War and over-inclusive in that it protects all military personnel who served after

9/11, including those who never saw combat and never left the U.S. The exemption also places an unnecessary burden on record custodians and doesn't address the burden of proof – is a record custodian to accept my word that I served in the military after 9/11 or am I required to provide some sort of proof such as a Form DD-214? If I'm required to provide proof, then any documents I provide become public record subject to disclosure and must be retained by the record custodian. We strongly suggest that this misguided public record exemption be allowed to sunset. Our veto request letter is attached.

Section 119.0712(2)(c), Email Addresses – DHSMV: The FAF raised public policy concerns on the passage of this public record exemption for email addresses collected by the Department of Highway Safety and Motor Vehicles. However, we've not received any complaints regarding the implementation or application of the exemption and aren't opposed to reenactment of the exemption in its current form.

Section 197.3225, Email Addresses – Tax Collectors: Our concerns regarding passage of the exemption for email addresses collected by tax collectors were much the same as those expressed for the similar DHSMV exemption, and like that exemption, we've not received any complaints. Thus, we do not oppose reenactment of the exemption as currently drafted.

Section 383.412, Identifying Information – Deceased Children: The public record exemption for information identifying the surviving siblings of a child whose death occurred as a result of a verified report of abuse or neglect held by the State Child Abuse Death Review Committee is sufficiently narrow and the Foundation is not opposed to reenactment of the exemption in its current form.

Section 409.1678(6), Safe Houses – Sexual Exploitation Victims: The FAF does not oppose the reenactment of this exemption for information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation.

Section 474.2167, Veterinary Medical Practice: Section 474.2167, F.S., protects medical records relating to (1) diagnosing the medical condition of any animal; (2) prescribing, dispensing, or administering drugs, medicine, and appliances; and (3) treatments for prevention, cure, or relief of a wound, fracture, bodily injury, or disease of any animal held by a state college of veterinary medicine. The FAF did not oppose the passage of these exemption and does not object to reenactment.

Section 560.312, OFR - Financial Regulation Payments: The Foundation does not object to reenactment of the public record exemption for payment transaction information that identifies a licensee, payor, payee, or conductor contained in a database held by OFR.

Section 787.06(10), Safe Houses – Sexual Exploitation Victims: This exemption for information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation is sufficiently narrow and FAF does not object to reenactment of the exemption as currently drafted.

Section 895.06(7), Florida RICO Act Investigations: The FAF does not oppose reenactment of the narrow exemption for information relating to a RICO Act violation until all investigations relating to such information are completed

Section 943.0583(11), Human Trafficking Victims: Again, this public record exemption for information revealing the identity of human trafficking victims whose criminal history records have been expunged is sufficiently narrow and FAF does not object to its reenactment.

Section 1009.987, Florida ABLE Program: The Foundation doesn't object to reenactment of the public record exemption for personal financial and health information of participants in the program held by the Florida Prepaid College Board, Florida ABLE Inc., or the Florida ABLE program as currently drafted.

Please let us know if you have any questions or need additional information.

Sincerely,



Barbara A. Petersen, President

Cc: The Honorable Scott Plakon, Vice-Chair, H. State Administration Committee
The Honorable Kevin Rader, Vice-Chair, S. Governmental Oversight & Accountability Committee
Heather Williamson, Staff Director, H. State Administration Committee
Joe McVane, Staff Director, S. Governmental Oversight & Accountability Committee
Bob Shaw, Chair, First Amendment Foundation Legislative Committee

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 1/14/2020 2:32:05 PM

Ends: 1/14/2020 3:43:26 PM

Length: 01:11:22

2:32:05 PM Meeting called to order by Chair Perry
2:32:07 PM Roll call by AA Sue Arnold
2:32:13 PM Quorum present
2:32:18 PM Comments from Chair Perry
2:32:24 PM Introduction of Tab 7 by Chair Perry
2:32:40 PM Explanation of SB 884, Law Enforcement and Correctional Officers by Senator Hooper
2:34:14 PM Speaker Gary Hester, Government Affairs, Florida Police Chiefs Association in support
2:35:22 PM Speaker Matt Puckett, Florida Police Benevolent Association in support
2:35:37 PM Mike Kelley, Chairman, Fraternal Order of Police waives in support
2:35:51 PM Closure by Senator Hooper
2:35:55 PM Roll call by AA
2:36:38 PM SB 884 reported favorably
2:36:45 PM Introduction of Tab 9 by Chair Perry
2:36:54 PM Explanation of SB 1056, PACE Center for Girls by Senator Simpson
2:37:32 PM Introduction of Amendment Barcode No. 569194 by Chair Perry
2:37:41 PM Explanation of Amendment by Senator Simpson
2:37:51 PM Amendment adopted
2:37:57 PM Speaker Gail Armstrong, Executive Director Hernando & Pasco, Pace Center for Girls in support
2:40:11 PM Speaker Mallory, Pace Center for Girls
2:40:53 PM Chair Perry in debate
2:41:02 PM Closure waived
2:41:05 PM Roll call by AA
2:41:08 PM CS/SB 1056 reported favorably
2:41:18 PM Introduction of Tab 5 by Chair Perry
2:41:30 PM Explanation of SB 852, Restrictive Housing for Incarcerated Pregnant Women by Senator Pizzo
2:41:34 PM Introduction of Amendment Barcode No. 203040 by Chair Perry
2:41:38 PM Explanation of Amendment by Senator Pizzo
2:42:42 PM Closure waived
2:42:44 PM Amendment adopted
2:42:52 PM Karen Gross, Legislative Director, American Civil Liberties Union of Florida waives in support
2:42:56 PM Rex Dimmig, 10th Judicial Circuit, Florida Public Defender Association in support
2:43:00 PM Karen Woodall, Executive Director, FL Center for Fiscal & Economic Policy waives in support
2:43:05 PM Barbara DeVane, FL NOW waives in support
2:43:10 PM Laura Hernandez, Legislative Manager, Florida Alliance & Planned Parenthood waives in support
2:43:18 PM Charo Valero, Florida Latina Advocacy Network waives in support
2:43:25 PM Ida Eskamani, New Florida Majority waives in support
2:43:37 PM Speaker Greg Pound
2:45:04 PM Senator Pizzo in closure
2:45:09 PM Roll call by AA
2:45:20 PM CS/SB 852 reported favorably
2:45:33 PM Introduction of Tab 4 by Chair Perry
2:45:45 PM Explanation of SB 846, Costs of Prosecution and Investigation by Senator Simmons
2:46:45 PM Introduction of Amendment Barcode No. 532144 by Chair Perry
2:47:06 PM Explanation of Amendment by Senator Simmons
2:47:49 PM Question from Senator Pizzo
2:48:05 PM Response from Senator Simmons
2:49:38 PM Follow-up question from Senator Pizzo
2:49:44 PM Response from Senator Simmons
2:50:34 PM Closure waived
2:50:38 PM Amendment adopted
2:50:45 PM Speaker Rex Dimmig, 10th Judicial Circuit, Florida Public Defender Association in support
2:54:22 PM Question from Senator Pizzo

2:54:29 PM Response from Mr. Dimmig
2:54:42 PM Follow-up question from Senator Pizzo
2:54:49 PM Response from Mr. Dimmig
2:55:31 PM Follow-up question from Senator Dimmig
2:55:38 PM Response from Mr. Dimmig
2:56:04 PM Speaker Dave Aronberg, State Attorney, 15th Judicial Circuit in opposition
2:57:38 PM Brian Haas, State Attorney, 10th Judicial Circuit waives in opposition
2:57:56 PM Senator Simmons in closure
2:58:03 PM Roll call by AA
2:58:55 PM CS/SB 846 reported favorably
2:59:07 PM Chair turned over to Senator Brandes
2:59:36 PM Introduction of Tab 3 by Chair Brandes
2:59:44 PM Explanation of SB 700, Juvenile Diversion Program Expunction by Senator Perry
3:00:00 PM Introduction of Late-filed Amendment Barcode No. 881846 by Chair Brandes
3:00:08 PM Explanation of Amendment by Senator Perry
3:00:22 PM Amendment adopted
3:00:32 PM Sal Nuzzo, Vice President of Policy, The James Madison Institute waives in support
3:00:40 PM Michael Dobson, President, The Dream Foundation, Inc. waives in support
3:00:47 PM Scott McCoy Senior Policy Counsel, Southern Poverty Law Center Action Fund waives in support
3:00:53 PM Dawn Steward, Florida PTA waives in support
3:00:57 PM Rex Demmig, Public Defender, 10th Judicial Circuit waives in support
3:01:03 PM Kara Gross, Legislative Director, American Civil Liberties Union of Florida waives in support
3:01:07 PM Christian Minor, Executive Director, Florida Juvenile Justice Association waives in support
3:01:14 PM Candice Brown, Office of Criminal Conflict & Civil Regional Council waives in support
3:01:30 PM Closure waived
3:01:33 PM Roll call by AA
3:01:37 PM CS/SB 700 reported favorably
3:01:56 PM Introduction of Tab 2 by Chair Brandes
3:02:08 PM Explanation of SB 544, Husband-wife Communications Privilege by Senator Harrell
3:03:36 PM Introduction of Amendment Barcode No. 351250 by Chair Brandes
3:03:45 PM Explanation of Amendment by Senator Harrell
3:04:47 PM Closure waived
3:04:57 PM Amendment adopted
3:05:00 PM Dave Aronberg, State Attorney, 15th Judicial Circuit waives in support
3:05:08 PM Alan Johnson, Chief Assistant State Attorney, 15th Judicial Circuit waives in support
3:05:24 PM Speaker Dave Aronberg, State Attorney, 15th Judicial Circuit
3:06:09 PM Closure by Senator Harrell
3:06:14 PM Roll call by AA
3:06:35 PM CS/SB 544 reported favorably
3:06:46 PM Introduction of Tab 10 by Chair Brandes
3:07:00 PM Explanation of SB 1292, Public Records/Nonjudicial Arrest Record of a Minor by Senator Perry
3:07:24 PM Scott McCoy, Senior Policy Consultant, Southern Poverty Law Center Action Fund waives in support
3:07:28 PM Rex Demmig, Public Defender, 10th Judicial Circuit waives in support
3:07:34 PM Dr. Danielle Thomas, Legislation Chair, Florida PTA waives in support
3:07:47 PM Closure waived
3:07:50 PM Roll call by AA
3:07:52 PM SB 1292 reported favorably
3:08:01 PM Introduction of Tab 6 by Chair Brandes
3:08:07 PM Explanation of SB 872, Public Records/Commissioners and Specified Personnel/School Administrators by Senator Perry
3:08:45 PM Introduction of Amendment Barcode No. 231474 by Chair Brandes
3:08:50 PM Explanation of Amendment
3:09:00 PM Closure waived
3:09:04 PM Amendment adopted
3:09:35 PM Closure waived
3:09:39 PM Roll call by AA
3:09:44 PM CS/SB 872 reported favorably
3:09:54 PM Introduction of Tab 1 by Chair Brandes
3:10:02 PM Explanation of SB 294, Crimes Against Veterans by Senator Wright
3:11:17 PM Meredith Stanfield, Legislative and Cabinet Affairs, CFO Jimmy Patronis waives in support
3:11:21 PM Danny Burgess, Executive Director, Florida Department of Veterans' Affairs waives in support
3:11:41 PM Closure waived

3:11:49 PM SB 294 reported favorably
3:12:01 PM Introduction of Tab 8 by Chair Brandes
3:12:14 PM Explanation of SB 888, Public Nuisances by Senator Perry
3:12:52 PM Matt Butler, Captain, Orange County Sheriff's Office waives in support
3:13:03 PM Closure waived
3:13:05 PM Roll call by AA
3:13:25 PM SB 888 reported favorably
3:13:38 PM Chair returned to Chair Perry
3:13:48 PM Introduction of Tab 12 by Chair Perry
3:14:07 PM Explanation of SPB 7036, OGSR/Criminal Intelligence Information/Criminal Investigative by Mike Erickson
3:15:30 PM Question from Senator Bracy
3:15:35 PM Response from Mr. Erickson
3:16:22 PM Question from Senator Brandes
3:16:27 PM Response from Mr. Erickson
3:16:43 PM Follow-up question from Senator Brandes
3:16:52 PM Response from Mr. Erickson
3:17:07 PM Additional question from Senator Brandes
3:17:14 PM Response from Mr. Erickson
3:17:27 PM Question from Senator Bracy
3:17:41 PM Response from Mr. Erickson
3:18:56 PM Senator Brandes asks to postpone legislation
3:19:09 PM Response from Chair Perry
3:20:03 PM Response from Mr. Erickson
3:20:18 PM Comments from Senator Brandes
3:21:53 PM Comments from Chair Perry
3:22:18 PM Speaker Greg Pound
3:23:23 PM Senator Bracy in debate
3:24:03 PM Comments from Chair Perry
3:24:44 PM Question from Senator Bracy
3:24:52 PM Response from Chair Perry
3:25:44 PM Comments from Senator Brandes
3:26:15 PM Speaker Gary Hester, Government Affairs, Florida Police Chief Association
3:27:59 PM Question from Senator Brandes
3:28:42 PM Response from Mr. Hester
3:30:49 PM Speaker Bill Cervane, 8th Judicial Circuit, State Attorney's Office
3:32:06 PM Question from Senator Brandes
3:32:45 PM Response from Mr. Cervane
3:35:20 PM Comments from Chair Perry
3:36:08 PM Senator Flores moves that SPB 7032 be submitted as a Committee Bill
3:36:18 PM Roll call by AA
3:36:23 PM SPB 7032 reported favorably
3:36:38 PM Introduction of Tab 14 by Chair Perry
3:37:08 PM Explanation of SPB 7038, OGSR/Information Held by an Investigative Agency by Mike Erickson
3:38:48 PM Senator Brandes moves that SPB 7038 be submitted as a Committee Bill
3:38:55 PM Roll call by AA
3:38:59 PM SPB 7038 reported favorably
3:39:08 PM Introduction of Tab 11 by Chair Perry
3:39:27 PM Explanation of SPB 7036, OGSR/Criminal Intelligence Information/Criminal Investigative Information by Amanda Stokes
3:40:43 PM Senator Bracy moves that SPB 7036 be submitted as a Committee Bill
3:40:46 PM Roll call by AA
3:40:50 PM SPB 7036 reported favorably
3:41:00 PM Introduction of Tab 13 by Chair Perry
3:41:14 PM Explanation of SPB 7034, OGSR/Location Information by Ryan Cox
3:42:44 PM Senator Flores moves that SPB 7034 be submitted as a Committee Bill
3:42:52 PM Roll call by AA
3:42:56 PM SPB 7034 reported favorably
3:43:05 PM Comments from Chair Perry
3:43:10 PM Senator Brandes moves to adjourn, meeting adjourned