

STORAGE NAME: h0181.go
DATE: March 25, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 181
RELATING TO: Public Records/Victims/Witnesses
SPONSOR(S): Representative Greene, Villalobos & others
STATUTE(S) AFFECTED: Creates 914.27
COMPANION BILL(S): SB 174(s), CS/HB 35(c), & CS/SB 176(c)
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GOVERNMENTAL OPERATIONS
(2)
(3)
(4)
(5)

I. SUMMARY:

HB 181 creates a limited public records exemption for information held by various governmental entities, and in some cases the private sector, regarding the identity and location of a victim or witness who has been identified or certified for receipt of certain protection services. Protection services include temporary relocation. HB 181 creates a public records exemption for information held by various governmental entities, and in some cases the private sector, which identifies relocation sites, techniques, or procedures utilized or developed for the purposes of providing victim or witness protection. Additionally, under certain circumstances, the identity and permanent relocation site/residence of a victim, witness, or immediate family member of a victim or witness is made confidential and exempt.

HB 181 provides that these exemptions are subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2002, unless otherwise reviewed and reenacted by the Legislature.

HB 181 does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Victim and Witness Protection Services

CS/HB 35, the companion bill to HB 181, provides for the delivery of victim and witness protection services. Any law enforcement agency, a state attorney, or the statewide prosecutor may identify, to the state attorney or statewide prosecutor having jurisdiction in a case, a victim or witness who is believed to be critical to a state investigation or prosecution and is at risk of harm by reason of that state criminal investigation or prosecution.

If the state attorney or statewide prosecutor determines that the victim or witness is critical to a state investigation or prosecution, the state attorney or statewide prosecutor may certify the victim or witness for special protection or temporary relocation services. Upon certification, the investigating agency, in conjunction with the certifying state attorney or statewide prosecutor, may provide appropriate witness protection services. Upon a finding by the state attorney or statewide prosecutor of a compelling need to temporarily relocate a victim or witness, the state attorney or statewide prosecutor must notify the Department of Law Enforcement. The Department of Law Enforcement, in consultation with the state attorney or statewide prosecutor and the investigating law enforcement agency, are required to coordinate a temporary relocation of the victim or witness.

Victim and witness protection services, including relocation, may be provided for up to 1 year or until the risks giving rise to the certification have diminished, whichever is sooner. The state attorney or statewide prosecutor may recertify a victim or witness at risk of harm for an additional period of up to 1 year.

The lead agency providing protective services may seek reimbursement from the Victim and Witness Protection Review Committee. The Victim and Witness Protection Review Committee is created within the Florida Violent Crime Council. Its membership is to consist of a state attorney or the statewide prosecutor, a sheriff, a chief of police, and the designee of the executive director of the Department of Law Enforcement. The committee must be appointed by the chair of the council, upon the advice of the executive director of the Department of Law Enforcement, from the membership of the council. The Victim and Witness Protection Review Committee is charged with developing criteria for the disbursement of reimbursement funds for protective services rendered and for the review and approval of requests for reimbursements.

Current Law Regarding Victim and Witness Protection

Currently “active criminal intelligence information” and “active criminal investigative information” are exempt from public disclosure pursuant to s. 119.07(3)(b), F.S. “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.

“Criminal intelligence information” and “criminal investigative information” do **not** include:

1. The time, date, location, and nature of a reported crime.
2. The **name**, sex, age, and **address** of a person arrested or **of the victim of a crime except as provided in s. 119.07(3)(f)**.
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.
5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.07(3)(f), and except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner ... until released at trial if it is found that the release of such information would:
 - a. **Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness;** and
 - b. Impair the ability of a state attorney to locate or prosecute a codefendant.
6. Informations and indictments except as provided in s. 905.26. s. 119.011(3), F.S.

Criminal intelligence information is considered “*active*” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. “Criminal investigative information” is considered “*active*” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. s. 119.011(3)(d), F.S.

A “**criminal justice agency**” means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections. s. 119.011(4), F.S.

Section 119.07(3)(f), F.S., provides that any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in ch. 794, F.S.; the identity of the victim of the crime of lewd, lascivious, or indecent assault upon or in the presence of a child, as defined in ch. 800, F.S.; or the identity of the victim of the crime of child abuse as defined by ch. 827, F.S., and any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings, which may

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reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chs. 794, 800, or 827, F.S., is exempt from public disclosure.

Section 92.56, F.S., provides that, under certain circumstances, court records, including testimony from witnesses, that reveal the photograph, name, or address of the victim of certain alleged offenses are confidential and exempt.

Section 945.10, F.S., provides, in part, that information held by the Department of Corrections, which if released would jeopardize a person's safety, or concerns a victim's statement and identity, is confidential and exempt.

Section 960.28, F.S., provides, in part, that information received or maintained by the Department of Legal Affairs identifying an alleged victim who seeks payment of medical expenses (under s. 960.28, F.S.) is confidential and exempt.

Section 794.03, F.S., provides that identifying information regarding the victim of any sexual offense identified within ch. 794, F.S., is confidential and exempt. The portion of that section mandating criminal sanctions for identifying a victim of a sexual offense in any instrument of mass communication was held unconstitutional. *State v. Globe Communications Corp.*, 648 So. 2d 110, 112 (Fla. 1994) ("If a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information.")

The current exemption for active criminal intelligence and investigative information held by a criminal justice agency would possibly apply to the entities involved in providing victim and witness protection services envisioned by HB 35. This is because a criminal justice agency is defined to include any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting law enforcement agencies. Accordingly, pursuant to the active criminal intelligence and investigation exemptions, victim or witness information may be kept from a "person arrested" if it would jeopardize the victim or witness (but apparently anybody else can get that information, including the best friend of the person arrested). Such victim or witness information would probably include location information if the victim or witness needed to be protected. However, when intelligence gathering and investigations are no longer "active" victim and witness information not provided to the person arrested, would become available. The definition of "active" is not keyed to the safety of the victim or witness.

Furthermore, the exemption in 119.07(3)(f), F.S., which runs to all agencies provides that criminal intelligence and investigative information (whether active or inactive) which reveals identifying information about victims, only applies to victims of certain sexual crimes, and does not include witness protection. HB 35 envisions providing protective services to victims of more than just sexual battery crimes, and envisions protecting witnesses.

Accordingly, those entities involved with the victim and witness protection services to be provided pursuant to HB 35 need specific exemptions to meet their needs. The exemptions must be for the scope and duration necessary to make their protective services program effective.

B. EFFECT OF PROPOSED CHANGES:

HB 181 provides that information held by any state or local law enforcement agency, state attorney, the statewide prosecutor, the Victim and Witness Protection Committee, or the Department of Law Enforcement which discloses the identity or location of a victim or witness who has been identified or certified for protection or relocation by the state attorney or statewide prosecutor pursuant to the victim and witness protection services afforded by s. 914.25, F.S., is confidential and exempt from public disclosure. Additionally, identity or location information of victim or witness family members is confidential and exempt.

If a victim or witness is identified but not certified for protective services pursuant to s. 914.25, F.S., the identity and location information described above becomes publicly available.

If a victim or witness is certified for protective services pursuant to s. 914.25, F.S., the above-described identity and location information becomes publicly available when the certification expires, unless the certifying entity provides a written statement to the Victim and Witness Protection Review Committee stating that disclosure of such information would constitute an unwarranted risk to, or jeopardize the safety of victims, witnesses, or family members of such victims or witnesses. Accordingly, such information remains confidential and exempt until the certifying entity determines that disclosure of such information would not constitute an unwarranted risk to, or jeopardize the safety of any person, and provides written notification to that effect to the Victim and Witness Protection Review Committee.

Additionally, HB 181 makes confidential and exempt relocation sites, techniques, or procedures utilized or developed as a result of the victim and witness protection services afforded by s. 914.25, F.S., as well as information regarding the identity or relocation site of any victim, witness, or immediate family member of a victim or witness who has made a relocation of permanent residence by reason of the victim's or witness' involvement in the investigation or prosecution giving rise to certification for protection or relocation pursuant to s. 914.25, F.S. The information discussed in this paragraph remains confidential and exempt.

HB 181 also provides that, for the purposes of effectively implementing the victim and witness protection services afforded by s. 914.25, any state or local law enforcement agency, state attorney, or the statewide prosecutor may provide written notification to other governmental agencies and to the private sector that information they possess should be held confidential and exempt in that it reveals identity or location information; relocation sites, techniques, or procedures; or permanent relocation information. The entity which provides such notification must also provide written notification as to when the identity or location information is to become publicly available (in accordance with the provisions of the act). Relocation sites, techniques, or procedures and permanent relocation information remains confidential and exempt. If sites, techniques, and procedures used were not kept exempt those seeking to do harm to victims or witnesses could easily sabotage any protections provided. Revealing permanent relocation information regarding a victim, witness, or family member would clearly jeopardize their continued safety.

HB 181 also provides that the information made confidential and exempt may be shared by law enforcement agencies, state attorneys, and the statewide prosecutor to facilitate the protection or relocation services and to support the prosecution efforts of the state attorneys and the statewide prosecutor. Any information so shared must remain confidential and exempt in the hands of any agency or entity to which the information is provided.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Certain information held by any state or local law enforcement agency, state attorney, the statewide prosecutor, and the Victim and Witness Protection Review Committee regarding victims and witnesses must be held confidential and exempt from public disclosure.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

This bill does not reduce or eliminate an entitlement to government services or subsidies.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Creates s. 914.27, F.S., which provides an exemption from the public records law for information held by various governmental entities, and in some cases the private sector, regarding the identity or location of a victim or witness identified or certified for protection or relocation pursuant to s. 914.25, F.S., and the location of immediate family members of such victim or witness; provides for the termination of such exemption. Provides that relocation sites, techniques, or procedures and permanent residential relocation sites are confidential and exempt. Provides that these exemptions are subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2002, unless otherwise reviewed and reenacted by the Legislature.

Section 2 -- Provides a public necessity statement for the exemption discussed above in section 1.

Section 3 -- Provides a contingent effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

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1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The provisions of this bill were before the Legislature in 1996 as CS/HB 2681. CS/HB 2681 was passed by the Committee on Governmental Operations but died in the House Committee on Rules & Calendar.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A technical amendment is needed to HB 181 in order to tie the effective date to the passage of HB 35.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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