

By the Committee on Criminal Justice and Senator Brown-Waite

307-2174-00

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A bill to be entitled  
An act relating to public-records exemptions;  
amending ss. 119.011, 119.07, F.S.; providing  
that certain records and information that would  
otherwise be exempt from public disclosure  
cease to be exempt a specified period after a  
sentence of death is imposed; providing a  
contingent effective date.

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

Section 1. Paragraph (d) of subsection (3) of section  
119.011, Florida Statutes, is amended to read:

119.011 Definitions.--For the purpose of this chapter:

(3)

(d)1. The word "active" shall have the following  
meaning:

~~a.1.~~ Criminal intelligence information shall be  
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.

~~b.2.~~ Criminal investigative information shall be  
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.

In addition, except as provided in subparagraph 2., criminal  
intelligence and criminal investigative information shall be  
considered "active" while such information is directly related

1 to pending prosecutions or appeals. The word "active" shall  
2 not apply to information in cases which are barred from  
3 prosecution under the provisions of s. 775.15 or other statute  
4 of limitation.

5 2. Criminal intelligence and criminal investigative  
6 information in a capital case shall not be considered "active"  
7 15 days after a sentence of death is imposed except for any  
8 portion of such information that remains "active" under  
9 sub-subparagraph 1.a. or sub-subparagraph 1.b. or relates to a  
10 pending criminal trial in which judgment has not yet been  
11 entered.

12 Section 2. Paragraphs (b) and (1) of subsection (3) of  
13 section 119.07, Florida Statutes, are amended to read:

14 119.07 Inspection, examination, and duplication of  
15 records; exemptions.--

16 (3)

17 (b) Active criminal intelligence information and  
18 active criminal investigative information are exempt from the  
19 provisions of subsection (1) and s. 24(a), Art. I of the State  
20 Constitution. Such information ceases to be exempt in a  
21 capital case 15 days after a sentence of death is imposed.

22 (1)1. A public record which was prepared by an agency  
23 attorney (including an attorney employed or retained by the  
24 agency or employed or retained by another public officer or  
25 agency to protect or represent the interests of the agency  
26 having custody of the record) or prepared at the attorney's  
27 express direction, which reflects a mental impression,  
28 conclusion, litigation strategy, or legal theory of the  
29 attorney or the agency, and which was prepared exclusively for  
30 civil or criminal litigation or for adversarial administrative  
31 proceedings, or which was prepared in anticipation of imminent

1 civil or criminal litigation or imminent adversarial  
2 administrative proceedings, is exempt from the provisions of  
3 subsection (1) and s. 24(a), Art. I of the State Constitution  
4 until the conclusion of the litigation or adversarial  
5 administrative proceedings. Such records cease to be exempt in  
6 a capital case 15 days after a sentence of death is imposed,  
7 except that, for purposes of capital collateral litigation as  
8 set forth in s. 27.7001, the Attorney General's office is  
9 entitled to claim this exemption for those public records  
10 prepared for direct appeal as well as for all capital  
11 collateral litigation after direct appeal until execution of  
12 sentence or imposition of a life sentence.

13         2. This exemption is not waived by the release of such  
14 public record to another public employee or officer of the  
15 same agency or any person consulted by the agency attorney.  
16 When asserting the right to withhold a public record pursuant  
17 to this paragraph, the agency shall identify the potential  
18 parties to any such criminal or civil litigation or  
19 adversarial administrative proceedings. If a court finds that  
20 the document or other record has been improperly withheld  
21 under this paragraph, the party seeking access to such  
22 document or record shall be awarded reasonable attorney's fees  
23 and costs in addition to any other remedy ordered by the  
24 court.

25         Section 3. This act shall take effect upon the  
26 effective date of rules adopted by the Supreme Court which  
27 provide for the appointment of collateral counsel within a  
28 specified period after the date a sentence of death is imposed  
29 and which provide for public-records production during the  
30 pendency of the direct appeal in capital cases.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2112

- Revises public records exemptions in sections 119.011(3)(d)(2), 119.07(3)(b), and 119.07(3)(l), F.S. These changes are designed to make the public records exemptions expire 15 days after a sentence of death is imposed. The intended effect is to disclose records and thereby allow postconviction counsel to access records in a death case when it is on direct appeal.
- Provides an exception for any portion of such information that remains "active" as part of an ongoing criminal intelligence and ongoing criminal investigation or which relates to a pending criminal trial in which judgment has not yet been entered.
- Provides an effective date contingent on the adoption of specified Supreme Court rules.