

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 394

SPONSOR: Criminal Justice Committee

SUBJECT: Review of Public Records Exemption in s. 914.27, F.S., relating to the victim and witness protection program

DATE: December 3, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cannon	Cannon	CJ	Favorable
2.	_____	_____	RC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill reenacts the public records exemption in s. 914.27, F.S., for information held by the:

- state or local law enforcement agency;
- state attorney;
- statewide prosecutor;
- Victim and Witness Protection Review Committee; or
- Florida 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;
- the identity or location of an immediate family member of a victim or witness who has been identified or certified;
- relocation sites, techniques, or procedures utilized or developed as a result of the victim and witness protective services afforded by s. 914.25, F.S.; or
- 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's involvement in the investigation or prosecution giving rise to certification for protective or relocation services.

Duplicative language is removed, along with the sentence repealing s. 914.27, F.S., as of October 2, 2002.

## II. Present Situation:

### Constitutional Access to Public Records and Meetings

Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy any public record 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.

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

### Open Government Sunset Review Act of 1995

Section 119.15, F.S., the *Open Government Sunset Review Act of 1995*, establishes a review and repeal process for exemptions to public records or meetings requirements.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which 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; 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.

In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Section 914.27, F.S., is subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

### **Section 914.25, F.S., Protective Services for Certain Victims and Witnesses**

During the 1997 legislative session, the Legislature enacted Chapter 97-52, L.O.F., which created s. 914.25, F.S. Specifically, the new law authorizes law enforcement agencies to provide protective services and temporary relocation services to a victim or witness at risk of harm. A victim or witness may be identified as a "victim or witness at risk of harm" by the statewide prosecutor, any state attorney, or any law enforcement officer. Once such identification has been made, the statewide prosecutor, the state attorney, or the law enforcement officer must notify either the statewide prosecutor or the state attorney who has jurisdiction over the criminal investigation.

The statewide prosecutor or the state attorney may determine whether an identified "victim or witness at risk of harm" is critical to a criminal investigation or prosecution. If such victim or witness is deemed critical, the statewide prosecutor or the state attorney may:

- Certify that the victim or witness receive protective services; or
- Certify that the victim or witness receive protective services, including temporary relocation services.

When such victim or witness is certified by the statewide prosecutor or the state attorney, a law enforcement agency, in "consultation" with the certifying state attorney or the statewide prosecutor, may provide appropriate protective services. The statewide prosecutor or the state attorney must notify the Florida Department of Law Enforcement (FDLE) if such victim or witness needs to be temporarily relocated. FDLE, in "consultation" with the statewide prosecutor or the state attorney, and any other law enforcement agency involved in the criminal investigation or prosecution, must coordinate the temporary relocation of such victim or witness.

Protective services and temporary relocation services may be provided for up to one year, or until the risk giving rise to the certification has diminished, whichever occurs sooner. The statewide prosecutor or the state attorney may recertify such victim or witness for an additional period of up to one year if necessary. According to FDLE there has been only one such extension request in the last four years and in that case additional protection services were sought.

Finally, the law provides for the lead law enforcement agency providing protective services to seek reimbursement for expenses from the Victim and Witness Protection Review Committee. As of June 30, 2001, there have been 55 applications to FDLE for reimbursement of certified victim and witness relocation efforts. Thirty-two of those applications were from Dade County.

### **Exemption from Public Records for Victim and Witness Information**

During the same 1997 session, the Legislature enacted Chapter 97-71, L.O.F., creating 914.27, F.S., and establishing an exemption from the public records law for records relating to victim and witness information. This section of law makes confidential information held by any state or local law enforcement agency, state attorney, the statewide prosecutor, or the Victim and Witness Protection Review Committee 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;
- the identity or location of an immediate family member of a victim or witness who has been identified or certified; and
- relocation sites and techniques utilized.

The law permits sharing of this information by law enforcement agencies and others to facilitate the protection efforts. However, the law specifies that when a victim or witness is identified but not certified to receive such services by the prosecutor, the information ceases to be exempt and becomes public information. When the certification expires, information made confidential becomes public information.

### **Findings from Staff Review**

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Staff determined that the identifying information contained in the victim and witness protection program meets the criteria in paragraph (a) as noted by the Legislature in 1997, as well as paragraph (b).

### **III. Effect of Proposed Changes:**

The bill reenacts the public records exemption in s. 914.27, F.S., for information held by the:

- state or local law enforcement agency;
- state attorney;
- statewide prosecutor;
- Victim and Witness Protection Review Committee; or
- Florida 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;
- the identity or location of an immediate family member of a victim or witness who has been identified or certified;
- relocation sites, techniques, or procedures utilized or developed as a result of the victim and witness protective services afforded by s. 914.25, F.S.; or
- 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's involvement in the investigation or prosecution giving rise to certification for protective or relocation services.

Duplicative language is removed, along with the sentence repealing s. 914.27, F.S., as of October 2, 2002.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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