

**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 542

INTRODUCER: Senator Braynon

SUBJECT: Public Records/Victim of Human Trafficking

DATE: March 6, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.			GO	
4.			RC	
5.				
6.				

**I. Summary:**

SB 542 makes confidential and exempt from public records requirements certain criminal intelligence information and criminal investigative information that might reveal the identity of a person who is a child victim of human trafficking involving commercial sexual activity or a photograph, videotape, or image of any part of the body of that victim.

The bill makes confidential and exempt from public records requirements identifying information of a person who is alleged to be a victim of these human trafficking offenses by prohibiting a public employee or officer who has access to that information from willfully and knowingly disclosing it to a person who is not assisting in the investigation or prosecution of the alleged offense or other persons authorized to receive that information.

The bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides a statement of public necessity for the exemptions as required by the Florida Constitution. The bill specifies that the exemptions stand repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

*Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.*

This bill substantially amends sections 119.071 and 794.024 of the Florida Statutes. The bill reenacts section 92.56(1)(a) of the Florida Statutes.

## II. Present Situation:

### Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, Section 24(a), of the Florida Constitution, provides that:

Every person has 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, 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.

In addition to the Florida Constitution, the Public Records Act,<sup>3</sup> specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to include 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.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> Article I, Section 24, of the Florida Constitution.

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., 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.

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> See generally *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions may be created by general law if approved by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup> The law must state with specificity the public necessity justifying the exemption and be no broader than necessary to accomplish the stated purpose of the law.<sup>10</sup> A bill enacting an exemption<sup>11</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>12</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency (the custodian of the record with the power to receive or communicate the record) to anyone other than to the persons or entities designated in the statute.<sup>13</sup> If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.<sup>14</sup>

The Open Government Sunset Review Act (Act)<sup>15</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law (public meetings).<sup>16</sup> Each year, by June 1, the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>17</sup> The Act 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.<sup>18</sup>

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>19</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.

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<sup>8</sup> Article I, Section 24(c), of the Florida Constitution.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Under s. 119.15(4)(b), F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>12</sup> Article I, Section 24(c), of the Florida Constitution.

<sup>13</sup> Attorney General Opinion 85-62.

<sup>14</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

<sup>15</sup> Section 119.15, F.S.

<sup>16</sup> Section 286.011, F.S.

<sup>17</sup> Section 119.15(5)(a), F.S.

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals, cause unwarranted damage to their good name or reputation, or would jeopardize their safety. (Only information that would identify such individuals may be exempted under this provision).
- 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.<sup>20</sup>

The Act also requires, as part of the review process, that the Legislature consider the following:

- 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?<sup>21</sup>

### **Public Records Exemptions: Identity and Images of Victims of Sexual Offenses**

Section 119.071(2)(h), F.S., provides, in part, that the following criminal intelligence information<sup>22</sup> or criminal investigative information<sup>23</sup> is confidential and exempt from s. 119.07(1), F.S., and Article I, Section 24(a), of the Florida Constitution<sup>24</sup>:

- Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery offenses), ch. 796, F.S. (prostitution and related offenses), ch. 800, F.S. (lewd or lascivious/child

<sup>20</sup> *Id.*

<sup>21</sup> Section 119.15(6)(a), F.S.

<sup>22</sup> “Criminal intelligence information” is 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. Section 119.011(3)(a), F.S.

<sup>23</sup> “Criminal investigative information” is 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. Section 119.011(3)(b), F.S.

<sup>24</sup> Criminal intelligence information and criminal investigative information do not include: (1) time, date, location, and nature of a reported crime; (2) name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.; (3) time, date, and location of the incident and of the arrest; (4) crime charged; (5) documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., 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 and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant; and (6) informations and indictments except as provided in s. 905.26, F.S. Section 119.011(3)(c), F.S.

victim), ch. 827, F.S. (child abuse offenses), or ch. 847, F.S. (obscenity offenses, including computer pornography).<sup>25</sup>

- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S., ch. 796, F.S., ch. 800, F.S., s. 810.145, F.S. (video voyeurism), ch. 827, F.S., or ch. 847, F.S. The exemption applies regardless of whether the photograph, videotape, or image identifies the victim.<sup>26</sup>

This information may be disclosed by a law enforcement agency if any of the following apply:

- In the furtherance of the law enforcement agency's official duties and responsibilities.
- 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.
- To another governmental agency in the furtherance of the law enforcement agency's official duties and responsibilities.<sup>27</sup>

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.<sup>28</sup>

Current s. 119.071(2)(h), F.S., is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.<sup>29</sup>

Section 92.56(1)(a), F.S., provides that the confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h), F.S., must be maintained in court records pursuant to s. 119.0714(1)(h), F.S., and in court proceedings, including testimony from witnesses.

Section 92.56(2), F.S., provides that a defendant charged with a crime described in ch. 794, F.S., or ch. 800, F.S., or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under this section. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information may not be construed to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other

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<sup>25</sup> Section 119.071(2)(h)1.b., F.S.

<sup>26</sup> Section 119.071(2)(h)1.c., F.S.

<sup>27</sup> Section 119.071(2)(h)2., F.S.

<sup>28</sup> Section 119.071(2)(h)3., F.S.

<sup>29</sup> Section 119.071(2)(h)4., F.S.

person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

Section 119.0714(1), F.S., provides that nothing in ch. 119, F.S., shall be construed to exempt from s. 119.07(1), F.S., a public record that was made part of a court file and that is not specifically closed by order of court, except for any of the records or information listed in that subsection. One of the exceptions, which is described in s. 119.0714(1)(h), F.S., is criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S.

Section 794.024, F.S., provides that it is a second degree misdemeanor for a public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of an offense described in this ch. 794, F.S., ch. 800, F.S., s. 827.03, F.S., s. 827.04, F.S., or s. 827.071, F.S., to willfully and knowingly disclose it to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in an order entered by the court having jurisdiction of the alleged offense, or organizations authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim.

### **Human Trafficking/Commercial Sexual Activity**

Section 787.06, F.S., in part, prohibits and punishes human trafficking involving commercial sexual activity.<sup>30</sup> Relevant to the bill, the statute provides that any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking<sup>31</sup>:

- For commercial sexual activity in which any child under the age of 18 is involved commits a first degree felony, punishable by imprisonment for a term of years not exceeding life.<sup>32</sup>
- For commercial sexual activity in which any child under the age of 15 is involved commits a life felony.<sup>33</sup>

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

The bill amends s. 119.071, F.S., to make confidential and exempt from public records requirements:

- Any information that may reveal the identity of a person who is a victim of s. 787.06(3)(g), F.S., or s. 787.06(3)(h), F.S.

<sup>30</sup> "Commercial sexual activity" means any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.

<sup>31</sup> "Human trafficking" means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

<sup>32</sup> Section 787.06(3)(g), F.S.

<sup>33</sup> Section 787.06(3)(h), F.S.

- A photograph, videotape, or image of any part of the body of the victim of s. 787.06(3)(g), F.S., or s. 787.06(3)(h), F.S., regardless of whether the photograph, videotape, or image identifies the victim.

Section 787.06(3)(g), F.S., prohibits a person from knowingly, or in reckless disregard of the facts, engaging in, or attempting to engage in, or benefiting financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for commercial sexual activity in which any child under the age of 18 is involved.

Section 787.06(3)(h), F.S., prohibits a person from knowingly, or in reckless disregard of the facts, engaging in, or attempting to engage in, or benefiting financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for commercial sexual activity in which any child under the age of 15 is involved.

The bill also amends s. 794.024, F.S., to make confidential and exempt from public records requirements identifying information of a person who is alleged to be a victim of these human trafficking offenses by prohibiting a public employee or officer who has access to that information from willfully and knowingly disclosing it to a person who is not assisting in the investigation or prosecution of the alleged offense or other persons authorized to receive that information.

The bill reenacts s. 92.56(1)(a), F.S., for the purpose of incorporating the amendment made by the bill to s. 119.071, F.S., in a reference to s. 119.071, F.S.

The bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides the following statement of public necessity for the exemptions as required by the Florida Constitution:

The Legislature finds that it is a public necessity that personal identifying information relating to an individual who is an alleged victim of human trafficking be made confidential and exempt from public records requirements. Present Florida law provides that the identities and any photographs of victims of sexual offenses are confidential. However, victims of human trafficking are not included in this protection. The Legislature finds that instituting confidentiality protections sought here for victims of human trafficking would be identical to those confidentiality provisions presently in law protecting the identity of victims of other sexual offenses. These amendments recognize that victims of human trafficking deserve the same protection as victims of sexual abuse.

The bill specifies that the exemptions stand repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

The bill takes effect July 1, 2013.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

**Vote Requirement**

Article I, Section 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created public records exemption. Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

**Public Necessity Statement**

Article I, Section 24(c), of the Florida Constitution requires a public necessity statement for a newly created public records exemption. Because this bill creates new public records exemptions, it includes a public necessity statement.

## C. Trust Funds Restrictions:

None.

**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. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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