

**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 238

**INTRODUCER:** Criminal Justice Committee and Senator Joyner

**SUBJECT:** Public Records/Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel

**DATE:** November 4, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 238 expands an existing public records exemption for certain personal identification and location information of current and former public defenders, of current and former criminal conflict and civil regional counsel, and of the spouses and children of such defenders and counsel. The exemption would also protect the *names* of such spouses and children.

The expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the Florida Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

This bill amends section 119.071 of the Florida Statutes.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act<sup>10</sup> requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.<sup>11</sup> It further provides that a public records exemption may be created

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

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

<sup>4</sup> Section 119.011(12), F.S., defines "public records" 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." Section 119.011(2), F.S., defines "agency" to mean "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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> Section 119.15(3), F.S.

or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.<sup>12</sup>

### **Current Exemptions Relating to Agency Personnel in s. 119.071(4)(d), F.S.**

Section 119.071(4)(d), F.S., currently provides public records exemptions for specified personal identifying and locating information of the following current and former agency personnel, as well as for specified personal identifying and locating information of their spouses and children, including the following:

- Law enforcement and specified agency investigative personnel;<sup>13</sup>
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Department of Juvenile Justice direct-care personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Department of Business and Professional Regulation investigators and inspectors; and
- County tax collectors.

Although there is some inconsistency among the types of information exempted,<sup>14</sup> all of the exemptions protect the following information:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel.

Eight of the exemptions protect the *names* of the following agency personnel's spouses and children:

- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad Litem;
- Department of Juvenile Justice direct-care personnel;

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<sup>12</sup> Section 119.15(5)(b), F.S.

<sup>13</sup> Included in this category are the following: active or former sworn or civilian law enforcement personnel, including Department of Corrections officers and correctional probation officers, Department of Children and Families abuse and exploitation investigators, Department of Health child abuse investigators, and Department of Revenue collection and enforcement personnel.

<sup>14</sup> Some of the exemptions also protect photographs, dates of birth, and names of agency personnel and their spouses and children.

- Department of Business and Professional Regulation inspectors and investigators;
- County tax collectors;
- Law enforcement and specified agency investigative personnel and
- Local and statewide prosecuting attorneys.

The public necessity statements for these agency personnel public-records exemptions suggest that the persons engaged in the specified occupations are at risk of becoming objects of public ire. The specified occupations require decisions, actions, or information-sharing that could elicit significant emotional reactions from the public. In extreme instances, those emotional reactions could lead to acts of violence against the agency personnel and their families.

### **Public Defenders and Criminal Conflict and Civil Regional Counsel**

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent defendants in criminal cases. Criminal conflict and civil regional counsel also represent clients in matters before the courts involving alleged child abuse, alleged child neglect, and potential termination of parental rights.

Clients of public defenders and criminal conflict and civil regional counsel have a great deal at stake in the outcome of their legal matters, which can lead to violent outbursts. According to the Offices of the Public Defender, past such outbursts have included battery and threats of physical harm.

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

The bill expands the public records exemption for personal identification and location information of current and former public defenders, of current and former criminal conflict and civil regional counsel, and of the spouses and children of such defenders and counsel to also protect the *names* of the spouses and children.

The bill provides for repeal of the expanded portion of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

It also provides a statement of public necessity as required by the Florida Constitution. The statement of public necessity concludes that the people with whom public defenders and regional counsel have contact may seek to harm their spouses and children; therefore, the exemption is warranted.

The bill's effective date is October 1, 2014.

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

#### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:****Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. Because this bill expands a public records exemption, a two-thirds vote is required.

**Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. Because this bill expands a public records exemption, it contains a public necessity statement.

**Single Subject Requirement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill expands a public records exemption, it does not contain other substantive provisions.

**Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including the names of spouses and children of specified agency personnel in the existing exemption that protects certain personal and identifying information. The public necessity statement provides that the exemption is necessary to protect those current and former public defenders and current and former criminal conflict and civil regional counsel, who because of their job responsibilities often come into close contact with persons who may want to harm them or their families. The public necessity statement further provides that the harm of releasing the names of spouses and children outweighs the public benefit of disclosing them.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

C. **Government Sector Impact:**

The bill could create a minimal impact on agencies, because staff responsible for complying with public records requests could require training related to the changes in the exemption. The costs should be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

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.)

**CS by Criminal Justice on November 4, 2013:**

The CS includes a more complete description of the volatile nature of the work of criminal conflict and regional counsel in the statement of public necessity.

B. **Amendments:**

None.