

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 Governmental Oversight and Accountability

BILL: CS/SB 1108

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Flores

SUBJECT: Public Records/Identity of a Victim/Human Trafficking Offenses

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Kim	McVaney	GO	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1108 expands the current public records exemption for certain criminal intelligence and criminal investigative information to include identifying information of a child victim of human trafficking for labor or services, as well as any victim of human trafficking for commercial sexual activity.

The bill also creates a public record exemption for this newly described criminal intelligence or investigative information relating to human trafficking victims that is expunged or ordered expunged under s. 943.0583, F.S.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

This bill expands an existing public record exemption and creates a new one; therefore, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

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.¹ The records of the legislative, executive, and judicial branches are specifically included in the Florida Constitution.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ 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 provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ 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)).

⁵ Section 119.07(1)(a), F.S.

⁶ 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).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

meetings exemptions.¹⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹¹

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹³
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁴ or
- It protects trade or business secrets.¹⁵

The OGSR also requires specified questions to be considered during the review process.¹⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁸

¹⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ Section 119.15(6)(b)1., F.S.

¹⁴ Section 119.15(6)(b)2., F.S.

¹⁵ Section 119.15(6)(b)3., F.S.

¹⁶ Section 119.15(6)(a), F.S. The specified questions are:

- 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?

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ Section 119.15(7), F.S.

Public Record Exemption for Investigation Information

Section 119.071(2)(h), F.S., provides that specified criminal intelligence information¹⁹ or criminal investigative information^{20,21} is confidential and exempt from public records requirements, including the following:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S. (child abuse);
- 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), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity); and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (child abuse), or ch. 847, F.S. (obscenity), regardless of whether the photograph, videotape, or image identifies the victim.²²

This confidential and exempt criminal investigative and criminal intelligence information may be disclosed by a law enforcement agency in specified instances, including:

- In the furtherance of its 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;²³ or
- To another governmental agency in the furtherance of its official duties and responsibilities.

¹⁹ Section 119.011(3)(a), F.S., defines “criminal intelligence information” to mean 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.

²⁰ Section 119.011(3)(b), F.S., defines “criminal investigative information” to mean 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.

²¹ Section 119.011(3)(c), F.S., provides “criminal intelligence information” and “criminal investigative information” shall not include:

- The time, date, location, and nature of a reported crime.
- The 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.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- 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. 119.071(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.
- Informations and indictments except as provided in s. 905.26, F.S.

²² Section 119.071(2)(h)3., F.S., requires the exemption to apply to confidential and exempt criminal intelligence and criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

²³ Section 119.071(2)(h)2.b., F.S., provides the information disclosed 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.

Public Record Exemption for Expunged Criminal History Records

A criminal history record of a minor or an adult that is ordered expunged must be physically destroyed by any criminal justice agency having custody of such record, with the exception of the Florida Department of Law Enforcement (FDLE), which must retain criminal history records in all cases.²⁴ Current law provides that a criminal history record ordered expunged that is retained by FDLE is confidential and exempt from public records requirements, and is not available to any person or entity except upon order of the court with jurisdiction.²⁵

In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements; however, FDLE must disclose the existence of such record to specified entities for their respective licensing, access authorization, and employment purposes as well as to criminal justice agencies for their respective criminal justice purposes.²⁶ Disclosure of the existence of such record to unauthorized persons is a first degree misdemeanor.²⁷

Human Trafficking

Human trafficking is defined as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.”²⁸ The human trafficking statute, s. 787.06, F.S., states that the Legislature finds that this crime is a form of modern-day slavery and that victims of human trafficking include young children, teenagers, and adults. These victims are subjected to force, fraud, or coercion so they can become forced labor or be sexually exploited.²⁹

Human Trafficking Victim Expunction/Public Record Exemption

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for an expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed while he or she was a victim of human trafficking. The statute defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.³⁰

The court of original jurisdiction over the crime desired to be expunged is the court designated in the statute to hear the victim’s petition.³¹ A petition must be initiated by the petitioner with due

²⁴ Section 943.0585(4), F.S.

²⁵ *Id.*

²⁶ Section 943.0585(4)(c), F.S.

²⁷ *Id.* A first degree misdemeanor is punishable by serving up to one year in county jail and/or paying a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

²⁸ Section 787.06(2)(d), F.S.

²⁹ Section 787.06(1)(a), F.S.

³⁰ Section 943.0583(1)(c), F.S.

³¹ Section 943.0583(2), F.S.

diligence after the victim has ceased being a victim of human trafficking or has sought human trafficking services.³² A petition to expunge must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.³³

The petitioner or the petitioner's attorney is allowed under the statute to appear at the hearing telephonically, via video conference, or by other electronic means.³⁴

If the court grants relief to the petitioner, the clerk of the court must certify copies of the expunction order to the appropriate state attorney or statewide prosecutor and the arresting agency. FDLE is responsible for forwarding the order to expunge to the Federal Bureau of Investigation.³⁵

Any criminal justice agency having custody of such record, except FDLE, must physically destroy the record. Human trafficking victims receiving a record expunction under this statute are lawfully able to deny or fail to acknowledge the covered arrests, except if they are applying for employment with a criminal justice agency or are a defendant in a criminal prosecution.³⁶

A criminal history record ordered expunged under this section that is retained by FDLE is confidential and exempt from public record requirements and can only be made available to criminal justice agencies for their respective criminal justice purposes and to any governmental agency that is authorized to determine eligibility to buy or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties. A criminal justice agency may retain a notation indicating compliance with an order to expunge. The exemption is repealed on October 2, 2018, unless reviewed and reenacted by the Legislature.³⁷

III. Effect of Proposed Changes:

CS/SB 1108 expands the current public records exemption for certain criminal intelligence and criminal investigative information that is confidential and exempt under s. 119.071(2)(h), F.S., to include the following:

- Any information that reveals the identity of a person under 18 who is the victim of human trafficking for labor or services under s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity under s. 787.06(3)(b), (d), (f), or (g), F.S.; and
- Any photograph, videotape, or image of a body part of a victim of human trafficking involving commercial sexual activity under s. 787.06(3)(b), (d), (f), or (g), F.S.

³² Section 943.0583(4), F.S.

³³ Section 943.0583(6), F.S.

³⁴ Section 943.0583(7)(b), F.S.

³⁵ Section 943.0583(7)(c), F.S.

³⁶ Section 943.0583(8), F.S.

³⁷ Section 943.0583(10), F.S.

This bill does not exempt criminal intelligence and investigative information related to an adult or child who is an unauthorized alien and a victim of human trafficking for labor or services under s. 787.06(3)(c), F.S. It is not clear why this category of people are excluded from the exemption since unauthorized aliens who are trafficked for commercial sexual activity under 787.06(3)(d), F.S., are included in this exemption.

The bill also creates a public record exemption under s. 943.0583, F.S. The new exemption makes confidential and exempt from public disclosure any criminal intelligence information or criminal investigative information that reveals the identity of victim of human trafficking whose criminal history has been expunged. The exemption also applies to criminal intelligence information or criminal investigative information that may reveal the identity of a victim of human trafficking whose criminal history been ordered to be expunged.

The exempted information may be disclosed by a law enforcement agency as follows:

- In the furtherance of its 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;³⁸ or
- To another governmental agency in the furtherance of its official duties and responsibilities.

The exemption applies to information held by a law enforcement agency before, on, or after the effective date of the exemption.

The bill provides the following public necessity statement as required by the Florida Constitution:

The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain intelligence or investigative records revealing the identity of a minor victim for labor or any victim for commercial sexual activity of human trafficking. The identity of such victims is of a sensitive personal nature and protecting the release of such information protects them from further embarrassment, harassment, or injury.

The Legislature also finds that it is a public necessity that intelligence or investigative records related to a criminal history record ordered expunged under s. 943.0583, Florida Statutes, which would or could reasonably be expected to reveal the identity of a victim of human trafficking whose criminal history record has been ordered expunged be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Persons who are victims of human trafficking and who have been charged with crimes allegedly committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal charges remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

³⁸ See Note 17.

It also provides for repeal of the exemptions on October 2, 2020, unless reviewed and reenacted by the Legislature.

The act will become effective on October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands and creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands and creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption limited to certain criminal intelligence and criminal investigative information relating to human trafficking and it creates a public record exemption limited to such information that has been ordered expunged. The exemption appears to be no broader than necessary to accomplish its stated purpose.

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. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071 and 943.0583.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 31, 2015:

The CS removes the contingent effective date which linked the bill to the enactment of SB 1106 and provides an effective date.

B. Amendments:

None.