

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 475 Public Records/Identity of a Witness to a Felony

SPONSOR(S): Criminal Justice Subcommittee; Narain and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Clark	White
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Currently, s. 119.071(2), F.S., in part, provides a public records exemption for various types of personal information of certain parties involved in the investigation of a crime. Such parties include confidential informants or confidential sources, a victim of a child abuse offense, and a victim of any sexual offense. This personal information includes their home addresses, telephone numbers, social security numbers, dates of birth, and photographs.

Currently, there is no exemption for the personal identification information of a witness to a felony.

The bill creates s. 119.071(2)(m), F.S., relating to a public records exemption for the personal identifying information of a witness to a felony.

The bill repeals the exemption on October 2, 2021, unless reviewed and saved by from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State 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 the current public record exemption for certain information related to guardianship; thus, it requires a two-thirds vote for final passage.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Florida Constitution

Article I, section 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

The Legislature, however, may exempt records from the requirements of article I, section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

This state's statutes also address the public policy regarding access to government records. Section 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and 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."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Public Record Exemption for Certain Investigation Information

Currently, s. 119.071(2), F.S., in relevant part, provides a public records exemption for various types of personal information of specified parties involved in the investigation of a crime. Information exempt from public records requirements include the personal information of a confidential informant or a confidential source,⁷ a victim of a child abuse offense,⁸ and a victim of any sexual offense.⁹ This

¹ FLA. CONST. art. I, s. 24(c).

² FLA. CONST. art. I, s. 24(c).

³ s. 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ s. 119.15(3), F.S.

⁷ s. 119.071(2)(f), F.S.

⁸ s. 119.071(2)(h)1.a., F.S.

⁹ s. 119.071(2)(h)1.b., F.S.

personal information includes home addresses, telephone numbers,¹⁰ social security numbers, dates of birth, and photographs.¹¹

News articles have recently reported on several homicides that occurred in 2015 in the Tampa area which remain unsolved.¹² The victim of one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.¹³ A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015 Mr. Harris was the witness to multiple crimes that resulted in arrests.¹⁴ Mr. Harris's family has made statements indicating that they believe he was murdered as a result of talking to police.¹⁵ Detectives within the Hillsborough County area have been quoted in the media as stating that witnesses to crimes refuse to come forward, often out of fear of retaliation and for their safety.¹⁶

Currently, there is no exemption for the personal identification information of a witness to a crime.

Effect of the Bill

The bill creates s. 119.071(2)(m), F.S., to provide that the personal identifying information of a witness to a felony is exempt from s. 119.07(1), F.S., and article I, section 24(a), of the Florida Constitution for two years after the date on which the felony is observed by the witness.

The bill provides that the personal identifying information may be disclosed only to a criminal justice agency or governmental entity for use in the performance of official duties.

The public necessity statement specifies that the Legislature finds that personal identifying information of a witness to a felony should be made exempt to encourage “[c]omplete cooperation and truthful testimony of witnesses” because “[t]he judicial system cannot function without the participation of witnesses.”

The bill repeals the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹⁷

B. SECTION DIRECTORY:

Section 1. Creates s. 119.071(2)(m), F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

¹⁰ Section 119.071(4)(d)1., F.S., states the term “telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

¹¹ An exemption from disclosure under the Public Records Act does not render the document automatically privileged for purposes of discovery. *See Dep’t. of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069 (Fla. 3d DCA 1984) (“Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.”); *B.B. v. Dep’t. of Children and Family Servs.*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that the statutory exemption for active criminal investigative information did not “override the discovery authorized by the Rules of Juvenile Procedure.”).

¹² Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, (Oct. 29, 2012), <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited Jan. 14, 2016); Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*, TAMPA BAY TIMES, (June 2, 2015), <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited Jan. 14, 2016).

¹³ Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, (June 2, 2015), <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited Jan. 14, 2016).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Keith Morelli, *Tampa lawmaker’s bill would keep felony witnesses secret*, TAMPA TRIBUNE, (Nov. 2, 2015), <http://www.tbo.com/news/breaking-news/tampa-lawmakers-bill-would-keep-felony-witnesses-secret-20151102/> (last visited Jan. 15, 2016).

¹⁷ Article I, Sec. 24(c), FLA. CONST.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 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 a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 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 a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 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's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

Requirements for Legislative Review

Section 119.15(3), F.S., requires that any public records exemption must be repealed five years after the enactment or substantial amendment of the exemption unless reviewed and saved from repeal by the Legislature. When reviewing an exemption, s. 119.15(6)(a), F.S., requires the Legislature to consider the following matters:

- 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?

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing the provision providing that the exemption applies to each witness until the conclusion of the prosecution of the felony or expiration of the statute of limitations period for the felony and by adding a provision that provides the exemption applies for a period of two years after the date on which the felony is observed by the witness. In addition, the committee substitute clarifies that the personal identifying information may be disclosed only to a criminal justice agency or governmental entity for use in the performance of official duties.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.