

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 1788

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Public Records/Victim of Human Trafficking

DATE: April 19, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	<b>Fav/CS</b>
2.			GO	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1788, which is linked to the passage of CS/SB 972, creates a public records exemption for victims of human trafficking. Specifically, any personal identifying information of victims of human trafficking which, upon request, is redacted or sealed in the court files and online dockets of actions brought by, or on behalf of, victims of human trafficking under s. 787.063, F.S., and any personal identifying information held by the Statewide Council on Human Trafficking is confidential and exempt from s. 119.07(1), and Art. I, s. 24(a), of the Florida Constitution.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it creates a new public records exemption.

The bill takes effect on the same date that CS/SB 972 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

## II. Present Situation:

The Florida Constitution provides that every individual has a right of access to public records which are made or received in connection with official public business unless the records are exempt. This right applies to records of the legislative, executive, and judicial branches.<sup>1</sup>

The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record<sup>2</sup> at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.<sup>3</sup>

Only the Legislature may create an exemption to public records requirements.<sup>4</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act (OGSR) requires a newly created or expanded public records exemption be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.<sup>5</sup> It further provides that a public records exemption may be created 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>6</sup>

An exemption serves an identifiable purpose if it meets one of the following purposes 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.
- The release of 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.
- It protects trade or business secrets.<sup>7</sup>

In addition, the Legislature must find that the purpose of the exemption overrides Florida's public policy strongly favoring open government.

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

<sup>2</sup> Section 119.011(12), F.S., defines "public record" as 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>3</sup> Section 119.07(1)(a), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST. 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 Bd. 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 1994); 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, then 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 Op. Att'y Gen, Fla. 85-62, August 1, 1985.

<sup>5</sup> Section 119.15(3), F.S.

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

<sup>7</sup> Section 119.15(6)(b)1.-3., F.S.

The OGSR also requires specified questions to be considered during the review process.<sup>8</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of the exemption. These 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?<sup>9</sup>

To enact an exemption, the bill may not contain other substantive provisions<sup>10</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>11</sup>

### **Human Trafficking**

CS/SB 972, which is linked to CS/SB 1788, creates a civil cause of action for victims of human trafficking to bring against the trafficker<sup>12</sup> or facilitator<sup>13</sup> of human trafficking. The bill allows a victim or the Statewide Council on Human Trafficking (council) with the consent of the victim, to bring a civil cause of action on behalf of the victim against the trafficker or facilitator of human trafficking who victimizes a person in Florida.

There is no statute of limitations for the newly created civil action.

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

The bill creates a public records exemption for victims of human trafficking.

At the request of the victim, or the council on behalf of the victim, a court hearing for the civil action created in s. 787.063, F.S., must be closed to the public, and any personal identifying information of the victim of human trafficking must be redacted or sealed in the court file and online docket for such hearings. The bill specifies that the redacted or sealed information in the court file or the online docket is confidential and exempt from s. 119.07(1) and Art. I, s. 24(a), of the Florida Constitution.

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<sup>8</sup> Section 119.15(6)(a), F.S.

<sup>9</sup> Section 119.15(6)(a)1.-6., F.S.

<sup>10</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>11</sup> Article I, s. 24(c), FLA. CONST.

<sup>12</sup> CS/SB 972 defines a “trafficker” as any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

<sup>13</sup> CS/SB 972 defines a “facilitator” as a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking.

A victim may also request that any personal identifying information of the victim of human trafficking held by the council under s. 787.063, F.S., be kept confidential and exempt from s. 119.07(1) and Art. I, s. 24(a), of the Florida Constitution.

The bill provides a statement of public necessity as required by the Florida Constitution.<sup>14</sup> The statement includes the following findings:

- Hearings conducted pursuant to s. 787.063, F.S., for victims of human trafficking should be closed to the public at the request of the victim or the council on behalf of the victim. Preventing public access to such hearings will allow victims of human trafficking to seek relief in the courts of the state without exposing their victimization to the public and to protect their identities as they continue to recover from their time as victims of human trafficking.
- Any personal identifying information of victims of human trafficking which, upon request, is redacted or sealed in the court files and online dockets of actions brought by, or on behalf of, victims of human trafficking under s. 787.063, F.S., and any personal identifying information held by the council should be made confidential and exempt from s. 119.07(1), and Art. I, s. 24(a), of the Florida Constitution.
- The identity of these victims and the details of their victimization are information of a sensitive, personal nature.
- The exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy they have already endured and would be defamatory or cause unwarranted damage to the good name and reputation of these victims.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill takes effect on the same date that CS/SB 972 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. CS/SB 972 is effective October 1, 2017.

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

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

None.

##### **B. Public Records/Open Meetings Issues:**

This bill creates a new public record exemption. Therefore, the following constitutional requirements apply.

##### **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 public record or public meeting

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<sup>14</sup> Article I, s. 24(c), FLA. CONST.

exemption. The bill creates a new 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 creates a new public record exemption and includes a public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the bill does not appear to be in conflict with this constitutional requirement.

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 may have a minimal fiscal impact on the courts and agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill is linked to the passage of CS/SB 972 (2017).

**VIII. Statutes Affected:**

This bill creates section 787.065 of the Florida Statutes.

**IX. 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 April 17, 2017:**

The committee substitute:

- Specifies that the victim, or the Statewide Council on Human Trafficking on behalf of the victim, may request the court hearings conducted pursuant to s. 787.063, F.S., be closed to the public;
- Requires any personal identifying information of the victim of human trafficking be redacted or sealed in the court file and online docket for such hearings;
- Specifies that the redacted or sealed information in the court file and online docket is confidential and exempt from s. 119.07(1) and Art. I, s. 24(a), of the Florida Constitution;
- Specifies that the victim may request that any personal identifying information of the victim of human trafficking held by the council under s. 787.063, F.S., be confidential and exempt from s. 119.07(1) and Art. I, s. 24(a), of the Florida Constitution; and
- Provides findings of the Legislature.

- B. **Amendments:**

None.