

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 1788

INTRODUCER: Senator Bracy

SUBJECT: Public Records/Victim of Human Trafficking

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Pre-meeting
2.			GO	
3.			AP	

I. Summary:

SB 1788, which is linked to the passage of SB 972, creates a public records exemption for victims of human trafficking. Specifically, a sealed court file of a victim of human trafficking and any redacted information in an online docket that identifies a victim of 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The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature.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 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.¹

¹ Article I, s. 24(a), FLA. CONST.

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 record² at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.³

Only the Legislature may create an exemption to public records requirements.⁴ 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.⁵ 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.⁶

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.⁷

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

² 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.

³ Section 119.07(1)(a), F.S.

⁴ 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.

⁵ Section 119.15(3), F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(6)(b)1.-3., F.S.

The OGSR also requires specified questions to be considered during the review process.⁸ 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?⁹

To enact an exemption, the bill may not contain other substantive provisions¹⁰ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹¹

Human Trafficking

SB 972, which is linked to SB 1788, creates a civil cause of action for a minor victim of human trafficking to bring against the trafficker¹² or facilitator¹³ of human trafficking who victimized the minor. The minor victim may recover actual and punitive damages and may seize and have forfeited the personal and real property of the trafficker or facilitator used in the trafficking.

At the victim's request, court hearings for the civil action or civil forfeiture must be closed to the public and any information in the court file and online docket, which identifies a victim of human trafficking, must be redacted or sealed.

The bill specifies that there is no statute of limitations for these civil actions or civil forfeiture cases.

III. Effect of Proposed Changes:

The bill creates a public records exemption for victims of human trafficking. Specifically, a sealed court file of a victim of human trafficking and any redacted information in an online docket that identifies a victim of human trafficking is confidential and exempt from s. 119.07(1) and Art. I, s. 24(a), of the Florida Constitution.

⁸ Section 119.15(6)(a), F.S.

⁹ Section 119.15(6)(a)1.-6., F.S.

¹⁰ The bill may, however, contain multiple exemptions that relate to one subject.

¹¹ Article I, s. 24(c), FLA. CONST.

¹² SB 972 defines a "trafficker" or "human trafficker" as any person who knowingly, or in reckless disregard of the facts, engages in human trafficking of a minor, attempts to engage in human trafficking of a minor, or benefits financially by receiving anything of value from participation in a venture that has subjected a minor to human trafficking.

¹³ SB 972 defines "facilitator" as assisting or providing services to a human trafficker, which assist or enable a trafficker to carry out human trafficking activities, or one who provides such assistance or provides such services.

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

- The identity of these victims and 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 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.

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 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.

¹⁴ Article I, s. 24(c), FLA. CONST.

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 SB 972 (2017).

SB 972 creates a civil action for *minor* victims of human trafficking. Whereas this bill provides a public records exemption for *victims* of human trafficking.

VIII. Statutes Affected:

This bill creates section 787.061 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.