

**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 Governmental Oversight and Accountability

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BILL: SB 128

INTRODUCER: Senator Wright

SUBJECT: Public Records/Judicial Assistants

DATE: October 11, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 128 creates a public record exemption for specified information that may identify or locate current or former judicial assistants and their spouses and children. Judicial assistants provide administrative, secretarial, organizational, and clerical support to an assigned judge's office. They are employed in the county and circuit courts, district courts of appeal, and the Florida Supreme Court.

The bill exempts from public disclosure the following information that relates to a current or former judicial assistant:

- A judicial assistant's address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of a judicial assistant's spouse and children.
- The names and locations of schools and day care facilities attended by a judicial assistant's children.

This exemption applies to information held by an agency before, on, or after July 1, 2020.

The bill provides a statement of public necessity as required by the State Constitution.

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

The bill takes effect July 1, 2020.

## II. Present Situation:

### Public Records Law

#### *Overview*

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>3</sup> The Public Records Act states:

It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>4</sup>

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

#### *Legislative and Judicial Records*

The Public Records Act does not apply to legislative or judicial records.<sup>5</sup> Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

#### *Definition*

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

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

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

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

<sup>6</sup> Section 119.011(12), F.S., defines “public record” 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” as “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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

### ***Access***

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

### ***Exemptions***

The Legislature has the sole authority to create an exemption to public records requirements.<sup>10</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>11</sup> An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose 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;<sup>12</sup>
- 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;<sup>13</sup> or
- It protects trade or business secrets.<sup>14</sup>

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions<sup>15</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>16</sup>

### ***“Confidential and Exempt” or “Exempt” Designations***

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>17</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>18</sup>

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<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *Id.*

<sup>12</sup> Section 119.15(6)(b)1., F.S.

<sup>13</sup> Section 119.15(6)(b)2., F.S.

<sup>14</sup> Section 119.15(6)(b)3., F.S.

<sup>15</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>16</sup> FLA. CONST., art. I, s. 24(c) and FLA. CONST., art. X, s. 12(e).

<sup>17</sup> If the Legislature designates a record as confidential, the record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

<sup>18</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

## Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>19</sup> with specified exceptions.<sup>20</sup> It requires the automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>21</sup> The Act 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 to meet such public purpose.<sup>22</sup>

## General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.<sup>23</sup>

### *(1) Social Security Numbers*

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.<sup>24</sup> An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.<sup>25</sup>

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.<sup>26</sup> This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of

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<sup>19</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>20</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>21</sup> Section 119.15(3), F.S.

<sup>22</sup> Section 119.15(6)(b), F.S. Section 119.15(6)(a), F.S., asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

- 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>23</sup> Section 119.071(4)(a) and (b), F.S.

<sup>24</sup> Section 119.071(4)(a)1., F.S.

<sup>25</sup> Section 119.071(4)(a), F.S.

<sup>26</sup> Section 119.071(5)(a)5., F.S.

that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.<sup>27</sup>

### ***(2) Medical Information***

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current, and former employees.<sup>28</sup>

### ***(3) Personal Identifying Information***

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.<sup>29</sup>

## **Public Records Exemptions for Enumerated Personnel**

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses, and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.<sup>30</sup> Additionally, all of these exemptions have retroactive application.<sup>31</sup> In order to have such exemption applied to a court record or an official record held by a clerk of court, the party must make a request specifying the document name, type, identification number, and page number.<sup>32</sup> Any enumerated personnel who has his or her public records held exempt may file a written and notarized request to any record custodian to have the records released to an identified party.<sup>33</sup>

### ***Justices and Judges***

The state judiciary, as established in Article V of the State Constitution, is composed of the justices of the Supreme Court and the judges in Florida's five District Courts of Appeal, 20 Circuit Courts, and 67 County Courts.<sup>34</sup> When carrying out their official duties, the judges and justices often preside over matters that are emotionally charged, whether in a trial, appeal, criminal proceeding, dependency hearing, or domestic or family law matter.

In 1991, and in an effort to protect the members of the judiciary, the Legislature enacted a public records exemption for current justices and judges and their families. The exemption protected their home addresses and telephone numbers as well as the home addresses, telephone numbers, and places of employment of their spouses and children, and the names and locations of schools

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<sup>27</sup> Section 119.071(5)(a)5.f. and g., F.S.

<sup>28</sup> Section 119.071(4)(b)1., F.S.

<sup>29</sup> Section 119.071(4)(b)2., F.S.

<sup>30</sup> Section 119.071(4)(d)3., F.S.

<sup>31</sup> Section 119.071(4)(d)5., F.S.

<sup>32</sup> Section 119.0714(2)(f) and (3)(f), F.S.

<sup>33</sup> Section 119.071(4)(d)4., F.S.

<sup>34</sup> FLA. CONST. art V. *See also* Florida Courts, <http://www.flcourts.org/florida-courts> (last visited Sept. 11, 2019).

and day care facilities attended by their children.<sup>35</sup> In 2012, the Legislature expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members.<sup>36</sup> The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.<sup>37</sup>

In 2017, the Legislature expanded this exemption to also exempt from disclosure the names of the justices' or judges' spouses and children.<sup>38</sup>

### ***Judicial Assistants***

Judicial assistants are assigned to individual justices or judges to provide administrative, secretarial, and clerical support. At the trial court level in particular, the judicial assistant is generally responsible for: maintaining the judge's professional and personal calendar; coordinating with attorneys to schedule hearings and trials; prepare orders, notices, and other correspondence; and preparing financial disclosures and travel vouchers. Most significantly, trial court level judicial assistants interact "with attorneys and litigants and their family members to resolve problems such as scheduling conflicts or other case-related issues."<sup>39</sup>

Based on this type of interaction, several trial court judicial assistants have reported that attorneys, litigants, or a litigant's family members have held the judicial assistant responsible for an adverse decision made by the judge. These judicial assistants reported instances of a litigant or litigant's family members showing up at the judicial assistant's home, contacting the judicial assistant on his or her personal cell phone, making threats against the judicial assistant, or naming the judicial assistant in a civil law suit.<sup>40</sup>

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

**Section 1** amends s. 119.071(4)(d)2.e., F.S., to exempt certain information relating to judicial assistants from the public disclosure requirements of the public record laws. The following information for a current or former judicial assistant will be exempt:

- A judicial assistant's address, date of birth, and telephone numbers.

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<sup>35</sup> Ch. 91-149, Laws of Fla. Because public necessity statements were not required for public records exemptions prior to the adoption of Article I, section 24, Florida Constitution, there is no public necessity statement explaining why the exemption was created.

<sup>36</sup> Ch. 2012-149, Laws of Fla.

<sup>37</sup> Ch. 2012-149, Laws of Fla.

<sup>38</sup> Ch. 2017-66, Laws of Fla.

<sup>39</sup>Florida State Courts System Class Specification, Class Title: Judicial Assistant – Circuit Court, *Examples of Work Performed*, available at <https://www.flcourts.org/content/download/217825/1972896/Judicial-Assistant-Circuit-Court-508.pdf>. For additional job descriptions of judicial assistants at the county court, district court, and Supreme Court levels, please see <https://www.flcourts.org/content/download/217827/1972908/Judicial-Assistant-County-Court-508.pdf>, <https://www.flcourts.org/content/download/217745/1972416/Appellate-Judicial-Assistant-District-Court-508-1.pdf>, and [https://www.flcourts.org/content/download/217748/1972434/Appellate\\_Judicial\\_Assistant\\_Supreme-Court\\_508.pdf](https://www.flcourts.org/content/download/217748/1972434/Appellate_Judicial_Assistant_Supreme-Court_508.pdf).

<sup>40</sup> See Judicial Assistants Association of Florida, *JA Threats* (2019) (on file with Senate Judiciary Committee).

- The names, home addresses, telephone numbers, dates of birth, and places of employment of a judicial assistant’s spouse and children.
- The names and locations of schools and day care facilities attended by a judicial assistant’s children.

The exemption applies to information held by an agency before, on, or after July 1, 2020.

**Section 2** contains the public necessity statement which explains why the exemption is necessary. The public necessity statement provides that, because judicial assistants frequently create ill will with litigants, the accused, the convicted, and their associates, judicial assistants and their families are at risk. Judicial assistants can become targets of fraud or revenge by disgruntled litigants who know the judicial assistants’ names, their personal information, and location. For these reasons, the identifying information of former and current judicial assistants and their family members should be exempt from public disclosure.

**Section 3** provides that the bill takes effect July 1, 2020.

#### IV. Constitutional Issues:

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

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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

###### *Vote Requirement*

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of each house for final passage of a bill creating an exemption to the public records requirements.<sup>41</sup> Because this bill creates an exemption for certain information relating to current or former judicial assistants, it requires a two-thirds vote of each house to be enacted.

###### *Public Necessity Statement*

Article I, s. 24(c), of the State Constitution requires a bill that creates an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

###### *Breadth of Exemption*

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

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<sup>41</sup> Article X, s. 12(e), of the State Constitution, Rules of Construction, states that a “Vote or other action of a legislative house . . . means the vote or action of a majority or other specified percentage of those members voting on the matter.” Accordingly, this two-thirds vote requirement means a favorable two-thirds vote of the members present and voting for final passage.

The public necessity statement notes that judicial assistants can create ill will with litigants through the course of their work and having their personal identifying information available publicly puts them at risk for fraud or acts of revenge. For these reasons, the exemptions do not appear broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any individual or business that currently obtains location information that is covered by the definition of “home addresses” in the bill will not be able to obtain that information from the records custodian without a signed waiver if the employee or the employee’s agency requests that the home address information be exempted.

C. Government Sector Impact:

The bill may have a minimal negative fiscal impact on agencies holding records that contain personal identifying information of judicial assistants because staff responsible for complying with public record requests may require training related to the new public record exemption. Additionally, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. However, the costs would be absorbed as they are part of the day-to-day agency responsibilities.

Although the Office of the State Courts Administrator (OSCA) has not submitted a Judicial Impact Statement for this bill at this time, it did submit a Judicial Impact Statement for SB 746 in 2019, which is virtually identical to this bill. In the previous analysis, OSCA stated that it did not anticipate a judicial or court workload impact from creating public records exemptions for judicial assistants and their families.

Similarly, the Florida Court Clerks and Comptrollers have not submitted a bill analysis of this bill but did submit an analysis for SB 746 in 2019. The association did not anticipate any significant operational, policy, or fiscal impact from that bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the 5th year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the 4th year after enactment instead of the 5th year. It can be reasoned, however, that advancing the scheduled review and repeal by 1 year is not problematic because the Open Government Sunset Review Act does not apply to an exemption that applies solely to the State Court System. Additionally, the deviation from the schedule set forth in the Open Government Sunset Review Act is supported by the reasoning that a previous legislature cannot bind a future legislature.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 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.