

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7019 PCB OTM 20-05 OGSR/Human Trafficking Victims
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee; Shoaf and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 7036

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7019 passed the House on March 9, 2020, and subsequently passed the Senate on March 11, 2020.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Human trafficking is the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.” An estimated 40.6 million persons were victims of human trafficking in 2016, with one in four victims being children. Florida law allows a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. The offense must be related to the human trafficking scheme of which the person was a victim or must have been committed at the direction of an operator of the scheme. The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.

Current law provides a public record exemption for the following criminal intelligence and criminal investigative information:

- Any information that reveals the identity of a person under the age of 18 who is the victim of a crime of human trafficking for labor or services;
- Any information that reveals the identity of the victim of the crime of child abuse;
- Any information that may reveal the identity of a person who is a victim of any sexual offense;
- Any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity; and
- A photograph, videotape, or image of any part of the body of a victim of a crime of certain sexual offenses, including human trafficking involving commercial sexual activity.

Additionally, a separate but related public record exemption provides that criminal intelligence and criminal investigative information that reveals or may reveal the identity of a victim of human trafficking whose criminal history has been expunged or ordered expunged is confidential and exempt from public records requirements. The information contained in both exemptions may be shared by a law enforcement agency in certain instances.

The bill saves from repeal the public record exemptions, which will repeal on October 2, 2020, if this bill does not become law.

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

The bill was approved by the Governor on September 4, 2020, ch. 2020-170, L.O.F., and will become effective on October 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. The act requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Human Trafficking

Human trafficking⁵ is a form of modern-day slavery, which involves exploiting a person for commercial sex or forced labor.⁶ An estimated 40.6 million persons were victims of human trafficking in 2016, with one in four victims being children.⁷ Human traffickers use various techniques to instill fear in victims and to keep them enslaved⁸ including the use of "violence, threats, deception, [and] debt bondage."⁹ Some traffickers keep their victims under lock and key.¹⁰ However, the most frequently used practices are less obvious techniques that include isolating a victim from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward a victim or the victim's family; threatening a victim with imprisonment or deportation for immigration violations if he or she contacts authorities; and controlling a victim's access to money by holding on to it, ostensibly

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ The term "human trafficking" means the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. Section 787.06(2)(d), F.S.

⁶ Section 787.06(1)(a), F.S.

⁷ *Forced labour, modern slavery and human trafficking*, INTERNATIONAL LABOUR ORGANIZATION, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited Jan. 24, 2020).

⁸ Section 787.06(1)(c), F.S.

⁹ *The Facts*, POLARIS PROJECT, <https://polarisproject.org/human-trafficking/facts> (last visited Jan. 24, 2020).

¹⁰ *Id.*

for safekeeping.¹¹ It is estimated that human trafficking “generates \$150 billion dollars in illegal profits a year.”¹²

Expunction of Human Trafficking Records

In 2013, the Legislature created a process to allow a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. To be eligible for expunction, the offense must be related to a human trafficking scheme of which the person was a victim or must have been committed at the direction of an operator of the scheme.¹³

The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Any criminal history record that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.¹⁴

Public Record Exemptions under Review

Current law provides a public record exemption¹⁵ for criminal intelligence¹⁶ and criminal investigative information¹⁷ that includes:

- Any information that reveals the identity of a victim of the crime of child abuse;¹⁸
- Any information that may reveal the identity of a person who is a victim of any sexual offense;¹⁹ and
- A photograph, videotape, or image of any part of the body of a victim of a crime of certain sexual offenses.²⁰

In 2015, the Legislature expanded the exemption to include:

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;²¹
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;²² and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.²³

¹¹ *Id.*

¹² *Profits and Poverty: The Economics of Forced Labour*, INTERNATIONAL LABOUR ORGANIZATION, http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm (last visited Jan. 21, 2020).

¹³ Chapter 2013-99, L.O.F.; codified as s. 943.0583, F.S.

¹⁴ Section 943.045(16), F.S.

¹⁵ Section 119.071(2)(h), F.S.

¹⁶ The term “criminal intelligence information” means 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. Section 119.011(3)(a), F.S.

¹⁷ The term “criminal investigative information” means 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. Section 119.011(3)(b), F.S.

¹⁸ See ch. 827, F.S.

¹⁹ See chs. 794, 796, 800, 827, and 847, F.S.

²⁰ See s. 810.145, F.S., and chs. 794, 796, 800, 827, and 847, F.S.

²¹ See s. 787.06(3)(a), F.S.

²² See s. 787.06(3)(b), (d), (f), and (g), F.S.

²³ *Id.*

In addition, criminal intelligence and criminal investigative information that reveals or may reveal the identity of a victim of human trafficking whose criminal history has been expunged or ordered expunged is confidential and exempt²⁴ from public records requirements.²⁵

While the criminal intelligence and criminal investigative information is confidential and exempt from public records requirements, a law enforcement agency may share such information:

- In the furtherance of its official duties and responsibilities;
- With another governmental agency in the furtherance of its official duties and responsibilities; or
- For print, publication, or broadcast, if the law enforcement agency determines that releasing the information will assist in locating or identifying a person the agency believes is missing or endangered; however, the information provided should be limited to information needed to identify or locate the victim.²⁶

The 2015 public necessity statement²⁷ for the exemption provides the following:

The Legislature finds that it is important to strengthen the protections afforded victims of human trafficking for labor who are minors and victims of human trafficking for commercial sexual activity, regardless of age, in order to ensure their privacy and to prevent their revictimization by making such information confidential and exempt. The identity of these victims is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputation of the victims. Protecting the release of identifying information of such victims protects them from further embarrassment, harassment, or injury. The Legislature also finds that it is a public necessity that information in the investigative or intelligence 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 person who is a victim of human trafficking whose criminal history record has been ordered expunged under s. 943.0583, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article 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.²⁸

Pursuant to the Open Government Sunset Review Act, the exemptions for human trafficking victim information will repeal on October 2, 2020, unless reenacted by the Legislature.²⁹

During the 2019 interim, subcommittee staff sent a questionnaire to the Department of Law Enforcement (FDLE), the Department of Juvenile Justice, and each sheriff's office and police

²⁴ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (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); *Williams v. City of Minneola*, 575 So. 2d 683, 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 statute. See Op. Att'y Gen. Fla. 85-62(1985).

²⁵ Section 943.0583(11), F.S.

²⁶ Sections 119.071(2)(h)2. and 943.0583(11)(b), F.S.

²⁷ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

²⁸ Section 3, ch. 2015-146, L.O.F.

²⁹ Sections 119.071(2)(h)4. and 943.0583(11)(d), F.S.

department to gather information concerning the implementation of the exemptions.³⁰ Of the respondents that possess records covered by the exemptions, a large majority believed that the exemptions should be reenacted without changes.³¹ In its response, FDLE indicated that the confidential and exempt information has been released for broadcast in the form of Amber Alerts.³² Additionally, FDLE stated that according to its records 59 people have met the criteria to have their criminal history record expunged under the human trafficking victim expunction provision.³³ Most respondents indicated they believe the exemptions had accomplished their purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons.³⁴

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemptions, thereby reenacting the public record exemptions for certain criminal intelligence and criminal investigative information.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

³⁰ Open Government Sunset Review Questionnaire, Criminal Intelligence and Investigative Information related to Human Trafficking, responses on file with the Oversight, Transparency & Public Management Subcommittee.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*