

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 931 Public Records
SPONSOR(S): Criminal Justice Subcommittee, Byrd
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1024

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Frost	Hall
2) Oversight, Transparency & Public Management Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida provides an exemption from public records for active criminal intelligence and investigative information. However, this exemption may not apply, in some circumstances, to the reinvestigation of a crime which resulted in a criminal conviction. The reinvestigation of a crime may involve gathering sensitive intelligence and investigative information, such as the identity or location of an alternate suspect, a witness, or other potential evidence needed to exonerate a wrongfully convicted person. As such, allowing public access to this information may compromise the reinvestigation of a wrongfully convicted person's case.

CS/HB 931 creates a public records exemption for postconviction reinvestigative information (PRI). The bill defines PRI as information compiled by a state attorney, or other criminal justice agency at the request of the state attorney, for the purpose of making an evidence-based determination as to whether a convicted person is innocent of a crime for which he or she was convicted.

The bill provides that PRI is exempt only if it relates to an ongoing, good faith investigation of a claim of actual innocence, and that the exemption terminates when the claim is no longer capable of further reasonable investigation or the relief sought by the claim is granted.

The bill provides that a public records exemption for PRI is a public necessity, because:

- Release of sensitive information, such as the identity or location of an alternate suspect, a witness, or other evidence needed to exonerate a wrongfully convicted person, could compromise the reinvestigation;
- Witnesses, who might otherwise be reluctant to come forward, are more likely to be forthcoming with evidence of a crime; and
- The harm that may result from the release of the information outweighs and public benefit that may be derived from disclosure.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The bill provides an effective date of July 1, 2020.

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; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

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. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.²

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act (Act)³ provides that a public record or public meeting 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 In addition, the exemption may be no broader than is necessary to meet one of the following purposes:⁵

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption. When considering reenacting an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. If continued and expanded, the exemption requires a public necessity statement and a two-thirds vote of the members present.

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." If records are designated as "exempt" the records' custodian cannot be compelled to disclose the record to another person.⁶ However, if records are designated as "confidential and exempt" the records' custodian cannot be compelled to disclose the record and is also prohibited from voluntarily disclosing the records except under circumstances specifically defined by the Legislature.⁷

¹ Art. I, s. 24(c), Fla. Const.

² *Id.*

³ S. 119.15, F.S.

⁴ S. 119.15(6)(b), F.S.

⁵ *Id.*

⁶ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

⁷ See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Active Criminal Investigation Exemption

Section 119.011, F.S., provides a public record exemption for “active criminal intelligence information” and “active criminal investigative information.”

- “Criminal intelligence information” means information with respect to an identifiable person or group of persons that is collected by a criminal justice agency in an effort to anticipate, prevent, or monitor criminal activity.⁸
- “Criminal investigative information” means information with respect to an identifiable person or group of persons that is compiled by a criminal justice agency in the course of conducting a criminal investigation, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or surveillance.⁹

Information is considered “active” when:

- For purposes of criminal intelligence, it relates to gathering intelligence with a reasonable, good faith belief that the intelligence will lead to detection of ongoing or reasonably anticipated criminal activities.
- For purposes of criminal investigation, it relates to an ongoing investigation which is continued with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
- For both criminal intelligence and criminal investigative information, it directly relates to pending prosecutions or appeals.

Agency Investigation Exemption

Section 119.071(2), F.S., provides general public records exemptions for agency investigations. Agency means 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 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.¹⁰ All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.¹¹

Conviction Integrity Review Units

A conviction integrity unit is a separate division within a prosecutorial office designated to work specifically to prevent, identify, and correct false convictions. In 2018, there were 44 conviction integrity units in the U.S. and 58 wrongfully convicted persons were exonerated.¹² In Florida, a conviction integrity unit is referred to as a Conviction Integrity Review Unit (CIRU).

Four Florida state attorney’s offices currently have a CIRU:

- The Fourth Circuit – covering Duval, Clay, and Nassau Counties.¹³
- The Ninth Circuit – covering Orange and Osceola Counties.¹⁴
- The Thirteenth Circuit – covering Hillsborough County.¹⁵
- The Seventeenth Circuit – covering Broward County.¹⁶

⁸ S. 119.011(3)(a), F.S.

⁹ S. 119.011(3)(b), F.S.

¹⁰ S. 119.011(2), F.S.

¹¹ S. 119.071(2), F.S.

¹² The National Registry of Exonerations, *Exonerations in 2018*, (Apr. 19, 2019)

<https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf> (last visited Feb. 4, 2020).

¹³ Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review*, <https://www.sao4th.com/about/programs-and-initiatives/conviction-integrity-review/> (last visited Feb. 4, 2020).

¹⁴ Office of the State Attorney for the Ninth Judicial Circuit, *Conviction Integrity Policy*, <https://www.sao9.net/conviction-integrity.html> (last visited Feb. 4, 2020).

¹⁵ Office of the State Attorney for the Thirteenth Circuit, *Conviction Review Unit*, <https://www.sao13th.com/conviction-review-unit-cru/> (last visited Feb. 4, 2020).

¹⁶ Office of the State Attorney for the Seventeenth Circuit, *Conviction Review Unit*, <http://www.sao17.state.fl.us/conviction-review.html> (last visited Feb. 4, 2020).

Each of the four CIRUs follow similar procedures, including requiring a convicted person to meet certain criteria to receive more than an initial screening of his or her case, such as presenting a plausible claim of innocence. Some units also rely on an independent review panel of legal experts who review and evaluate cases alongside the CIRU members.¹⁷ Prior to 2018, Florida had 64 exonerations, including eight wrongfully convicted persons who were sentenced to death.¹⁸

In 2019, the Fourth Circuit CIRU's investigation of the 1976 murder of Jeanette Williams resulted in the exoneration of two men, Clifford Williams and Nathan Myers, who were sentenced to life in prison.¹⁹ The CIRU's investigation confirmed multiple alibi witnesses for the two men at the time of the murder. The investigation also confirmed that another man admitted to committing the murder and that he was present when the murder occurred.²⁰ By the time the Fourth Circuit Court vacated Mr. Williams' and Mr. Myers' convictions on March 28, 2019, the two men had served 42 years and 11 months in prison.²¹

While a CIRU's reinvestigation of a crime may involve gathering sensitive intelligence and investigative information, such as the identity or location of an alternate suspect, a witness, or other potential evidence needed to exonerate a wrongfully convicted person, this type of investigative information does not qualify as active under the s. 119.011, F.S., exemption and does not qualify under the agency investigation exception either. As such, a member of the public may access a CIRU's reinvestigation information, which may discourage witnesses from coming forward with evidence of a crime, alert a potential alternate suspect, or otherwise compromise the reinvestigation of a wrongfully convicted person's case.

Effect of Proposed Changes

CS/HB 931 creates a public records exemption for postconviction reinvestigative information (PRI). The bill defines PRI as information compiled by a state attorney, or other criminal justice agency at the request of the state attorney, for the purpose of making an evidence-based determination as to whether a convicted person is innocent of a crime for which he or she was convicted.

The bill provides that PRI is exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), of the Florida Constitution only if it relates to an ongoing, good faith investigation of a claim of actual innocence, and that the exemption terminates when the claim is no longer capable of further reasonable investigation or the relief sought by the claim is granted.

The bill provides that a public records exemption for PRI is a public necessity, because:

- Release of sensitive information, such as the identity or location of an alternate suspect, a witness, or other evidence needed to exonerate a wrongfully convicted person, could compromise the reinvestigation;
- Witnesses, who might otherwise be reluctant to come forward, are more likely to be forthcoming with evidence of a crime; and
- The harm that may result from the release of the information outweighs and public benefit that may be derived from disclosure.

The bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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

¹⁷ See *supra*, notes 9–12.

¹⁸ The National Registry of Exonerations, *supra*, note 8, p. 19.

¹⁹ State Attorney's Office of the Fourth Judicial Circuit of Florida, *Conviction Integrity Investigation, State of Florida v. Hubert Nathan Meyers, State of Florida v. Clifford Williams, Jr.*, (Mar. 28, 2019) https://securerervercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited Feb. 4, 2020).

²⁰ *Id.*

²¹ *Id.*

The bill provides an effective date of July, 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amending s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Providing a public necessity statement.

Section 3: Providing an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

E.

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take 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; thus, 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; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public records exemption for active criminal investigative and intelligence information to include information relating to an ongoing, good faith investigation of a matter that previously resulted in an accused person's criminal conviction. The information remains exempt only while related to an ongoing good faith investigation, until such time as the claim is no longer capable of further reasonable investigation or the relief sought is granted. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Moved the provisions of the bill to a more appropriate statutory section.
- Created a public records exemption for postconviction reinvestigative information (PRI).
- Defined PRI.
- Provided that PRI is exempt only if it is related to an ongoing, good faith investigation of a claim of actual innocence.
- Provided that the PRI exemption terminates when the claim is no longer capable of further reasonable investigation or the relief sought by the claim is granted.
- Provided a public necessity statement for the PRI exemption.
- Provided for the repeal of the PRI exemption on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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