

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 643 Pub. Rec/Conviction Integrity Unit Reinvestigation Information

**SPONSOR(S):** Criminal Justice & Public Safety Subcommittee, Gottlieb, and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1048

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N, As CS	Frost	Hall
2) Government Operations Subcommittee	17 Y, 0 N	Villa	Smith
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida provides an exemption from public records requirements for active criminal intelligence information and active criminal 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.

CS/HB 643 (2021) creates a public records exemption for conviction integrity unit reinvestigative information. Under the bill, a conviction integrity unit is a unit established within a state attorney's office to review plausible claims of actual innocence, and reinvestigative information means information or materials generated during a conviction integrity unit's new investigation of an applicant's claim of actual innocence, after such unit formally accepts a case to review.

The bill ensures that a defense attorney is not barred from receiving necessary information relating to other postconviction relief sought, by specifying that reinvestigative information does not include:

- Information, materials, or records generated by a state attorney's office while investigating or responding to a motion to correct, modify, or reduce a sentence, to vacate or set aside a sentence, for postconviction DNA testing, or for any other collateral proceeding;
- An applicant's petition to a conviction integrity unit; or
- Any other criminal investigative information generated before a conviction integrity unit begins its reinvestigation that is not otherwise exempt.

Under the bill, reinvestigative information is exempt only for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence, until the claim is no longer capable of further investigation.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. The bill provides a public necessity statement as required by the Florida Constitution.

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

The bill provides an effective date of July 1, 2021.

**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 or expanded public record or public meeting exemption. The bill creates 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, s. 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 art. I, s. 24(a) of the Florida Constitution.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no broader than necessary to accomplish its purpose.<sup>3</sup>

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<sup>4</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, the exemption 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.<sup>5</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup>

Public record exemptions apply prospectively,<sup>7</sup> unless the Legislature provides clear intent that the exemption apply retroactively.<sup>8</sup>

##### Active Criminal Investigation Exemption

Section 119.071(2)(c), 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.
- "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.<sup>9</sup>

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>3</sup> Art. I, s. 24(c), FLA. CONST.

<sup>4</sup> S. 119.15, F.S.

<sup>5</sup> S. 119.15(6)(b), F.S.

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

<sup>7</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 784 So. 2d 438, 440-441 (Fla. 2001).

<sup>8</sup> *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 396 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003).

<sup>9</sup> S. 119.011(3)(a)-(b), F.S.; *see also* s. 119.011(3)(c), F.S., specifying certain information excluded from the definitions of criminal intelligence and criminal investigative information.

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.<sup>10</sup>

### Conviction Integrity Review Units

A conviction integrity unit is a separate division within a state attorney's office designated to work specifically to prevent, identify, and correct false convictions. In 2019, the National Registry of Exonerations recorded 143 exonerations of which 55 were secured by conviction integrity units.<sup>11</sup> In Florida, a conviction integrity unit is referred to as a Conviction Integrity Review Unit (CIRU).

Five Florida state attorney's offices currently have a CIRU:

- The Fourth Circuit – covering Duval, Clay, and Nassau Counties.<sup>12</sup>
- The Ninth Circuit – covering Orange and Osceola Counties.<sup>13</sup>
- The Thirteenth Circuit – covering Hillsborough County.<sup>14</sup>
- The Fifteenth Circuit – covering Palm Beach County.<sup>15</sup>
- The Seventeenth Circuit – covering Broward County.<sup>16</sup>

Each of the five 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.<sup>17</sup> As of March 12, 2021, Florida had 82 exonerations, including 11 wrongfully convicted persons who were sentenced to death.<sup>18</sup>

### *Recent CIRU Exonerations*

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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

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<sup>10</sup> S. 119.011(3)(d), F.S.

<sup>11</sup> The National Registry of Exonerations, *Annual Report*, (Mar. 31, 2020)

[https://www.law.umich.edu/special/exoneration/Documents/Exonerations\\_in\\_2019.pdf](https://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2019.pdf) (last visited Mar. 16, 2021).

<sup>12</sup> 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 Mar. 16, 2021).

<sup>13</sup> Office of the State Attorney for the Ninth Judicial Circuit, *Conviction Integrity Policy*, <https://www.sao9.net/conviction-integrity.html> (last visited Mar. 16, 2021).

<sup>14</sup> Office of the State Attorney for the Thirteenth Circuit, *Conviction Review Unit*, <https://www.sao13th.com/conviction-review-unit-cru/> (last visited Mar. 16, 2021).

<sup>15</sup> Office of the State Attorney for the Thirteenth Circuit, *Conviction Review Unit*, <http://sa15.org/> (last visited Mar. 16, 2021).

<sup>16</sup> Office of the State Attorney for the Seventeenth Circuit, *Conviction Review Unit*, <http://www.sao17.state.fl.us/conviction-review.html> (last visited Mar. 16, 2021).

<sup>17</sup> See *supra*, notes 11-15.

<sup>18</sup> The National Registry of Exonerations, *Exonerations by State*, (Mar. 12, 2021)

<https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (last visited Mar. 16, 2021).

<sup>19</sup> 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://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR\\_Investigative\\_Report\\_FINAL\\_3.28.19\\_R.pdf](https://secureservercdn.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 Mar. 16, 2021).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

In 2020, two more Florida men were exonerated. On August 27, 2020, after spending 37 years in prison for the 1983 rape and murder of a 19-year-old Hillsborough county woman, Robert DuBoise was released after DNA testing of evidence previously thought to be destroyed excluded Mr. DuBoise as a possible perpetrator. Mr. DuBoise was officially exonerated of all charges in September 2020.<sup>22</sup> On December 11, 2020, Leonard Cure was released from prison after the Broward County CIRU identified multiple issues with his case. In September 2004, after one trial with a hung jury, Mr. Cure was retried and found guilty of robbery and aggravated assault with a firearm based on a 2003 robbery at a Walgreen's store.<sup>23</sup> The victims in the case identified Mr. Cure based on two photo line-ups, one of which showed only photos of Mr. Cure. The CIRU also found that Mr. Cure had an alibi and there was no physical evidence linking him to the crime. Mr. Cure had served 16 years in prison when his conviction was vacated.<sup>24</sup>

While a CIRU's reinvestigation of a crime may involve gathering sensitive criminal 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. 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 643 (2021) creates a public records exemption for conviction integrity unit reinvestigative information. Under the bill, a "conviction integrity unit" is a unit established within a state attorney's office to review plausible claims of actual innocence. "Reinvestigative information" includes information or materials generated during a conviction integrity unit's new investigation of an applicant's claim of actual innocence, after such unit's written formal acceptance to review the case.

The bill ensures that a defense attorney is not barred from receiving necessary information relating to other postconviction relief by specifying that reinvestigative information does not include any of the following:

- Information, materials, or records generated by a state attorney's office while investigating or responding to a motion to correct, modify, or reduce a sentence, to vacate or set aside a sentence, for postconviction DNA testing, or for any other collateral proceeding.
- An applicant's petition to a conviction integrity unit.
- Any other criminal investigative information generated before a conviction integrity unit begins its reinvestigation that is not otherwise exempt.

The bill provides that conviction integrity unit reinvestigative information is exempt<sup>25</sup> only for a reasonable period of time during an active, ongoing, and good faith investigation of a person's claim of

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<sup>22</sup> Ken Otterbourg, *Robert DuBoise*, The National Registry of Exonerations, (Sept. 23, 2020) <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5807> (last visited Mar. 16, 2021). See also, The American Bar Association, *Former Florida Death Row Prisoner Robert DuBoise Released After 37 Years in Prison*, (Oct. 28, 2020) [https://www.americanbar.org/groups/committees/death\\_penalty\\_representation/project\\_press/2020/fall-2020/florida-death-row-prisoner-robert-duboise-exonerated-released/](https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2020/fall-2020/florida-death-row-prisoner-robert-duboise-exonerated-released/) (last visited Mar. 16, 2021).

<sup>23</sup> Tony Pipitone, *Broward Prosecutors Urge Release of Man Serving Life Sentence in 2003 Robbery*, NBC Miami (Apr. 13, 2020) <https://www.nbcmiami.com/news/local/broward-prosecutors-urge-release-of-man-serving-life-sentence-in-2003-robbery/2219338/> (last visited Mar. 16, 2021).

<sup>24</sup> Maurice Possley, *Leonard Cure*, The National Registry of Exonerations, (Jan. 4, 2021) <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5882> (last visited Mar. 16, 2021).

<sup>25</sup> 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) (Once an agency release[s] to the public certain information the Legislature has protected from disclosure by a Public Records Act exemption, no further purpose is served by the exemption and full public access to the information is warranted); *City of Rivera 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). However, a record designated confidential and exempt from public disclosure 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).

actual innocence in a case which previously resulted in his or her conviction. The exemption terminates when the claim is no longer capable of further investigation.

The bill provides a public necessity statement as required by the Florida Constitution. The statement provides that the public release of conviction integrity unit reinvestigative information may compromise the reinvestigation of a wrongfully convicted person's case by revealing sensitive information, such as the identity or location of an alternate suspect, a witness, or other evidence needed to exonerate a wrongfully convicted person.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

The bill provides an effective date of July 1, 2021.

**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, 2021.

**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 exempt information prior to releasing a record. Such costs, however, would be absorbed as part of the day-to-day responsibilities of these agencies.

**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 exempt information prior to releasing a record. Such costs, however, would be absorbed as part of the day-to-day responsibilities of these agencies.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

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, 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 or expanded public record or public meeting exemption. The bill creates a 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 public record exemption; thus, it includes a public necessity statement.

###### Breadth of Exemption

Article 1, s. 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 creates a public record exemption for reinvestigative information. The information remains exempt only while related to an ongoing good faith investigation, until 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 its purpose.

#### B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Criminal Justice and Public Safety Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made only technical changes to the bill to address minor drafting errors.

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