

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 Governmental Oversight and Accountability

BILL: SB 7012

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Criminal History Information of Juveniles

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Stokes</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7012 amends ss. 943.053 and 985.04, F.S., to save from repeal the current exemptions from public records disclosure for certain criminal history information of juveniles.

The original public necessity statement for the bill states that it is in the best interest of the public that individuals with juvenile misdemeanor records be given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.

Sections 943.053 and 985.04, F.S., relating to criminal history information of juveniles, are subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from the repeal through reenactment by the Legislature. This bill removes this repeal language.

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

This bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies

¹ FLA. CONST. art. I, s. 24(a).

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.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ 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.”

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

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ 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.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

The Criminal Justice Information Program

The Criminal Justice Information Program (CJIP) is a program established under the Florida Department of Law Enforcement (FDLE).²⁷ The CJIP must:

- Establish and maintain a communication system capable of transmitting criminal justice information to and between criminal justice agencies.
- Establish, implement, and maintain a statewide automated biometric identification system.
- Initiate a crime information system that is responsible for preparing and disseminating reports, providing data, and developing and maintaining an offender based transaction system.
- Adopt rules to implement, administer, manage, maintain, and use the automated biometric system and uniform offense reports and arrest reports.
- Establish, implement, and maintain a Domestic and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies.
- Establish, implement, and maintain a system for transmitting to and between criminal justice agencies information about writs of bodily attachment issues.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Sections 20.201(2)(b) and 943.05, F.S.

- In certain circumstances, retain fingerprints submitted by criminal and noncriminal justice agencies to the department for a criminal history background screening as provided by rule and enter the fingerprints in the statewide automated biometric identification system.²⁸

Public Records Exemption for Criminal History Information Relating to a Juvenile

In 2016, the Legislature amended ss. 943.053, and 985.04, F.S., to make the same criminal history information of juveniles confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.²⁹ Section 943.053(3)(b), F.S., provides that criminal history information relating to juveniles compiled by the CJIP is confidential and exempt, except when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court.

Section 943.053(3)(c), F.S., provides that criminal history information relating to juveniles, even if confidential and exempt, must be available to:

- Criminal justice agencies for criminal justice purposes;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates provided that such a person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(6)³⁰ or 943.059(6), F.S.³¹

Except as otherwise provided, all information obtained under ch. 985, F.S., relating to juveniles, is confidential and exempt.³² Section 985.04(2), F.S., provides that the name, photograph, address, and crime or arrest report of a juvenile is not confidential and exempt when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court. Prior to the amendment in 2016, the statute's language did not protect, or make confidential and exempt, the records of a juvenile who had committed three

²⁸ Section 943.05, F.S.

²⁹ Section 943.053(3)(b), F.S.; Chapter 2016-78, L.O.F.

³⁰ Section 943.0585(6), F.S., provides that a person may not deny or fail to acknowledge an arrest that has been expunged if he or she is: a candidate for employment with a criminal justice agency; a defendant in a criminal prosecution; currently or subsequently petitions for relief under this section, s. 943.0583, F.S., or s. 943.059, F.S.; is a candidate for admission to the Florida Bar; is seeking to be employed or licensed by or to contract with specified agencies or entities; is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.

³¹ Section 943.059(6), F.S., provides that a criminal history record of a minor or adult which is sealed by a court is confidential and exempt and is only available to the following: the subject of the record; the subject's attorney; criminal justice agencies; judges in the state courts system; specified agencies for their respective licensing access authorization and employment purposes. Additionally, a person may not deny or fail to acknowledge an arrest that has been expunged if he or she is: a candidate for employment with a criminal justice agency; a defendant in a criminal prosecution; currently or subsequently petitions for relief under this section, s. 943.0583, F.S., or s. 943.059, F.S.; is a candidate for admission to the Florida Bar; is seeking to be employed or licensed by or to contract with specified agencies or entities; is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check; is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.; or is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm.

³² Section 985.04(1), F.S.

or more misdemeanor offenses. The 2016 bill expanded the public records exemption by removing this exception, thereby making these records confidential and exempt.

Sections 943.053(3)(b) and 985.04(2), F.S., are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

[I]t is a public necessity that the criminal history information of juveniles, who have not been adjudicated delinquent of a felony or who have been found only to have committed misdemeanor offenses and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution under ss. 985.04 and 943.053, Florida Statutes. Many individuals who have either completed their sanctions and received treatment or who were never charged in the juvenile justice system have found it difficult to obtain employment. The presence of an arrest or a misdemeanor record in these individuals' juvenile past and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program creates an unnecessary barrier to becoming productive members of society, thus frustrating the rehabilitative purpose of the juvenile system. The Legislature found that it is in the best interest of the public that individuals with juvenile misdemeanor records are given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.³³

Staff Surveys/Meeting with FDLE Regarding Exemptions Under Review

During the 2020 interim, Senate and House professional staff contacted the FDLE regarding the exemption under review relating to criminal history information relating to juveniles compiled by the CJIP in s. 943.053, F.S. The FDLE requested to reenact the public records exemption and had no suggested amendments.

During the interim, surveys were sent to the Department of Juvenile Justice, county sheriff departments, and local police departments regarding the exemption under review in s. 985.04, F.S. All of the responding agencies that reported collecting the criminal history information of juveniles requested to reenact the public records exemption. An overwhelming majority requested to reenact the exemption as is. Only two responding requested reenactment with changes.

³³ Chapter 2016-78, L.O.F.

III. Effect of Proposed Changes:

The bill amends ss. 943.053 and 985.04, F.S., to save from repeal the current exemptions from public records disclosure for certain criminal history information of juveniles.

This bill deletes the scheduled repeal of the current public records exemptions for the criminal history information of juveniles.

This bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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 the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemptions under sunset review; it does not expand this exemption or create a new exemption. Therefore, the bill does not require a public necessity statement.

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. The purpose of the exemptions is to protect the release of juvenile misdemeanor records and certain criminal history information relating to juveniles. The exemption does not appear to be broader than necessary to accomplish the 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:

None.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.053 and 985.04.

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.