

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 Judiciary

BILL: SB 432

INTRODUCER: Senator Wright

SUBJECT: Public Records/Judicial Assistants

DATE: November 29, 2021 **REVISED:** _____

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

I. Summary:

SB 432 creates a public record exemption for judicial assistants. The exemption protects 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, 2022.

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, 2022.

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 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 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., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

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

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.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *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).

¹¹ *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).

¹² *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).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

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
- 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 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 expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

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

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

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.

written request to each agency which holds the employee's information.²⁷ Additionally, all of these exemptions have retroactive application.²⁸ 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.²⁹ 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.³⁰

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.³¹ 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 and day care facilities attended by their children.³² In 2012, the Legislature expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members.³³ 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.³⁴

In 2017, the Legislature expanded this exemption to also exempt from disclosure the names of the justices' or judges' spouses and children.³⁵

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

²⁷ Section 119.071(4)(d)3., F.S.

²⁸ Section 119.071(4)(d)6., F.S.

²⁹ Section 119.0714(2)(f) and (3)(f), F.S.

³⁰ Section 119.071(4)(d)5., F.S.

³¹ FLA. CONST. art V. *See also* Florida Courts, <http://www.flcourts.org/florida-courts> (last visited Nov. 22, 2021).

³² 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.

³³ Ch. 2012-149, Laws of Fla.

³⁴ Ch. 2012-149, Laws of Fla.

³⁵ Ch. 2017-66, Laws of Fla.

court level judicial assistants interact “with judges, clerks of court, litigants, attorneys, law enforcement personnel, bailiffs, social services, witnesses, and the general public to exchange information or to facilitate task completion.”³⁶ They also interact “with attorneys and litigants and their family members to resolve problems such as scheduling conflicts or other case-related issues.”³⁷ The appellate courts also employ judicial assistants in the district courts of appeal and the Florida Supreme Court.³⁸

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.³⁹

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.
- 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, 2022.

Section 2 contains the public necessity statement which explains why the exemption is necessary. The public necessity statement provides that, because judicial assistants may possibly engender 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, 2022.

³⁶ Florida State Courts System Classification Specification, Classification Title: Judicial Assistant – County Court <https://www.flcourts.org/content/download/751310/file/Judicial-Assistant-County-Court.pdf>.

³⁷ Florida State Courts System Classification Specification, Classification Title: Judicial Assistant – Circuit Court <https://www.flcourts.org/content/download/751317/file/Judicial-Assistant-Circuit-Court.pdf>.

³⁸ See also Florida State Courts System Classification Specification, Classification Title: Appellate Judicial Assistant – District Court, <https://www.flcourts.org/content/download/751180/file/appellate-judicial-assistant-district-court.pdf> and Florida State Courts System Classification Specification, Classification Title: Appellate Judicial Assistant – Supreme Court <https://www.flcourts.org/content/download/751181/file/appellate-judicial-assistant-supreme-court.pdf>.

³⁹ See Judicial Assistants Association of Florida, *JA Threats* (2021) (on file with the Senate Committee on Judiciary).

Please see section “VII. Related Issues” for a discussion of the shortened review and repeal date of this bill.

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 the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for records pertaining to judicial assistants; thus, the bill requires a two-thirds vote to be enacted.

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. Section 2 of the bill contains a statement of public necessity for the exemption.

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 law is to protect judicial assistants. This bill exempts only records pertaining to judicial assistants from the public records requirements. 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:

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:

SB 432 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.

The Office of the State Courts Administrator (OSCA) submitted a 2022 Judicial Impact Statement for this bill and said that it does not anticipate any judicial or court workload to be created by the bill. Additionally, OSCA does not anticipate any impact to court rules or jury instructions or any fiscal impact on the judiciary..

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 2nd year after enactment instead of the 5th year. It can be reasoned, however, that advancing the scheduled review and repeal by 3 years 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
