

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/SB 1402

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Martin

SUBJECT: Public Records/Investigative Genetic Genealogy Materials

DATE: April 5, 2023

REVISED: \_\_\_\_\_

|    | ANALYST              | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------------------|----------------|-----------|------------------|
| 1. | <u>Cellon</u>        | <u>Stokes</u>  | <u>CJ</u> | <b>Favorable</b> |
| 2. | <u>Limonos-Borja</u> | <u>McVaney</u> | <u>GO</u> | <b>Fav/CS</b>    |
| 3. | _____                | _____          | <u>RC</u> | _____            |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1402 makes confidential and exempt from public record inspection and copying requirements investigative genetic genealogy information and materials.

The exemption must be given retroactive application and must apply to all investigative genetic genealogy materials, including a single nucleotide polymorphism or whole genome sequencing profile, or a portion thereof, held in the possession of an agency before, on, or after July 1, 2023.

“Investigative genetic genealogy information and materials” and other technical terms are defined in the bill.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill is not expected to impact state or local government revenues and expenditures.

The bill becomes effective July 1, 2023.

## 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> 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.<sup>5</sup> Section 119.011(12), F.S., defines “public records” to include: Section 119.011(12), F.S., defines “public records” to include:

[a] ll 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.”<sup>6</sup>

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

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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

<sup>5</sup> 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.”

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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

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*.<sup>13</sup> 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.<sup>14</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>16</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

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<sup>7</sup> Section 119.07(1)(a), F.S.

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

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *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).

<sup>11</sup> *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).

<sup>12</sup> *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).

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

<sup>14</sup> *Id.*

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

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Section 119.15(3), F.S.

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

- 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;<sup>21</sup>
- 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;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

### Agency Investigations

Section 119.071(2), F.S., contains general exemptions from the public records law for agency investigations. For purposes of ch. 119, F.S., the definition of "agency" is 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 chapter 119, F.S., 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

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> 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?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

business entity acting on behalf of any public agency.<sup>27</sup> Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.<sup>28</sup>

“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.<sup>29</sup> “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.<sup>30</sup>

In this context, the word “active” means:

- Criminal intelligence information shall be considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
- Criminal investigative information shall be considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” shall not apply to information in cases which are barred from prosecution under the provisions of statutes of limitation.<sup>31</sup>

## Genetics

Genetics is the scientific study of genes and heredity, of how certain qualities or traits are passed from parents to offspring as a result of changes in DNA sequence. A gene is a segment of DNA that contains instructions for building one or more molecules that help the body work. DNA is shaped like a corkscrew-twisted ladder, called a double helix. The two ladder rails are called backbones, and the rungs are pairs of four building blocks (adenine, thymine, guanine, and cytosine) called bases. The sequences of these bases provide the instructions for building molecules, most of which are proteins. Researchers estimate that humans have about 20,000 genes. All of an organism’s genetic material, including its genes and other elements that control the activity of those genes, is its genome. An organism’s entire genome is found in nearly all of its cells.<sup>32</sup>

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<sup>27</sup> Section 119.011(2), F.S.

<sup>28</sup> Section 119.071(2)(c)1, F.S.

<sup>29</sup> Section 119.011(3)(a), F.S.

<sup>30</sup> Section 119.011(3)(b), F.S.

<sup>31</sup> Sections 119.011(3)(d) and 775.15, F.S.

<sup>32</sup> National Institute of Health, General Medicine Sciences, Genetics, *What is Genetics?*, available at <https://nigms.nih.gov/education/factsheets/Pages/genetics.aspx#:~:text=Genetics%20is%20the%20scientific%20study,that%20help%20the%20body%20work> (last visited Mar. 30, 2023).

Our DNA, including all of our genes, is stored in chromosomes, structures where proteins wind up DNA tightly so that it fits in the nucleus. Humans typically have 23 pairs of chromosomes in our cells. The two chromosomes in each pair contain the same genes, but they may have different versions of those genes because we inherit one chromosome in each pair from our mother and the other from our father.<sup>33</sup>

### **Genealogy Research by the Public**

Advances in DNA testing have allowed people to uncover information about their genetic ancestry and find out where some of their ancestors came from. Many companies are offering genetic testing services for individuals to find out about their ancestry using several different testing methods. These are the three types of DNA tests used in home testing kits:

- Autosomal, which uses autosomal chromosomes from both parents to determine a person's ethnic background. Can be taken by all genders, and does not determine haplogroups. This is the test most frequently used by genealogy researchers.
- mtDNA, which traces a person's maternal ancestry by testing mitochondria, which are passed down from mother to child. Can be taken by all genders. Also determines the test taker's maternal haplogroup, an ancient group of people from which they descend on their mother's side.
- Y-DNA, which traces a person's paternal ancestry by testing the Y-chromosome, can only be taken by those that have a Y-chromosome. Also determines the test taker's paternal haplogroup, an ancient group of people from which they descend on their father's side.<sup>34</sup>

These tests require one to swipe the inside of his or her cheek for a saliva sample, which is sent to a lab. There, the DNA is extracted, amplified, and analyzed. It is then compared to and matched with DNA samples from a reference database of a set of closely linked genes or DNA polymorphisms that have been identified in specific populations. If a person's DNA sequences match certain sequences in the database, the information can be used to determine the populations with which that person shares maternal or paternal ancestry.<sup>35</sup>

The number of people who have had their DNA analyzed with direct-to-consumer genetic genealogy tests more than doubled during 2017 and exceeds 12 million, according to industry estimates. Most of those tested are in the U.S., suggesting that around 1 in 25 American adults now have access to personal genetic data, a figure that could spur a range of new genetic analysis services.<sup>36</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> Boston Public Library, *Genetic Genealogy*, available at <https://guides.bpl.org/genealogymain/dna> (last visited Mar. 30, 2023).

<sup>35</sup> MIT Technology Review, Biotechnology, Leslie Hanlon, "Tracing Your Ancestry," available at <https://www.technologyreview.com/2006/02/24/229598/tracing-your-ancestry/> (last visited March 30, 2023).

<sup>36</sup> MIT Technology Review, Biotechnology, Antonio Regalado, "2017 was the year consumer DNA testing blew up," February 12, 2018, available at <https://www.technologyreview.com/2018/02/12/145676/2017-was-the-year-consumer-dna-testing-blew-up/> (last visited Mar. 30, 2023).

## Investigative Genetic Genealogy Materials

As explained by the International Society of Genetic Genealogy, investigative (or forensic) genetic genealogy is the science of using genetic and genealogical methods to generate leads for law enforcement entities investigating crimes and identifying human remains.

Genetic genealogists use DNA profiles from a crime scene or from unidentified human remains to identify close genetic DNA profiles or matches. By comparing the known genealogy of those close familial matches, this constrains the number of possible close relatives of the perpetrator or victim. Such efforts enable investigators or researchers to more closely focus their investigation in cold or stale criminal cases providing new leads.<sup>37</sup>

## The Florida Department of Law Enforcement Forensic/Investigative Genetic Genealogy Program

The Florida Department of Law Enforcement (FDLE) Genetic Genealogy team provides investigative leads to investigators based on DNA matches to relatives found in public genealogy databases.<sup>38</sup> The team includes experts in genetic genealogy, analytical research, forensics and investigations who work with local law enforcement agencies.<sup>39</sup> In its first year, the program helped identify four suspects, solving cases that were more than a decade old.<sup>40</sup>

## Catching the Golden State Killer Using Consumer DNA Testing Database

A Florida-based genealogy website called GEDmatch that allows users to voluntarily share their genetic profiles for free provided information that led investigators to the “Golden State Killer.”<sup>41</sup> The website revealed a distant relative and that information helped lead authorities to the man suspected of conducting 12 homicides, 45 rapes and more than 100 residential burglaries between 1976 and 1986.<sup>42</sup> The man subsequently pleaded guilty to 13 counts of first-degree murder and special circumstances (including murder committed during burglaries and rapes), as

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<sup>37</sup> International Society of Genetic Genealogy, *Investigative genetic genealogy FAQs*, available at [https://isogg.org/wiki/Investigative\\_genetic\\_genealogy\\_FAQs#cite\\_note-1](https://isogg.org/wiki/Investigative_genetic_genealogy_FAQs#cite_note-1) (last visited Mar. 30, 2023); see also The Florida Department of Law Enforcement, Forensics Disciplines, Genetic Genealogy, *Resource & Historical Information FDLE Forensic/Investigative Genetic Genealogy*, available at <https://www.fdle.state.fl.us/Forensics/Disciplines/Genetic-Genealogy/Resource-Historical-Information.aspx> (last visited Mar. 30, 2023).

<sup>39</sup> Florida Department of Law Enforcement, News, *FDLE Genetic Genealogy Investigations program solves cold cases in first year*, available at <https://www.fdle.state.fl.us/News/2019/October/FDLE-Genetic-Genealogy-Investigations-program-solv> (last visited Mar. 30, 2023).

<sup>38</sup> Florida Department of Law Enforcement, News, *FDLE Genetic Genealogy Investigations program solves cold cases in first year*, available at <https://www.fdle.state.fl.us/News/2019/October/FDLE-Genetic-Genealogy-Investigations-program-solv> (last visited Mar. 30, 2023).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> East Bay Times, “Here’s the ‘open-source’ genealogy DNA website that helped crack the Golden State Killer case,” Matthias Gafni, Lisa M. Krieger, September 21, 2018, available at <https://www.eastbaytimes.com/2018/04/26/ancestry-23andme-deny-assisting-law-enforcement-in-east-area-rapist-case/> (last visited Mar. 30, 2023); see also Los Angeles Times, *The untold story of how the Golden State Killer was found: A covert operation and private DNA*, Paige St. John, December 8, 2020, available at <https://www.latimes.com/california/story/2020-12-08/man-in-the-window> (last visited Mar. 30, 2023).

<sup>42</sup> *Id.*

well as 13 counts of kidnapping.<sup>43</sup> GEDmatch allows people to upload their DNA analysis to the site and opt-in for law enforcement matching. There are more than 140,000 people who have opted-in.<sup>44</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 119.071, F.S., to create a public records exemption for investigative genetic genealogy materials, including a single nucleotide polymorphism or a whole genome sequencing profile. This exemption does not extend to the name and identifying information of the donor of the biological sample that is attributable to a perpetrator of a crime, or of a witness to a crime who is identified through investigative genealogy. The exemption must be given retroactive application and must apply to all investigative genetic genealogy materials, including a single nucleotide polymorphism or whole genome sequencing profile, or a portion thereof, held in the possession of an agency before, on, or after July 1, 2023.

The bill defines the following terms:

- “DNA record” means all information associated with the collection and analysis of a person’s DNA sample, including the distinguishing characteristics collectively referred to as a DNA profile, and includes a single nucleotide polymorphism and a whole genome sequencing DNA profile.
- “Genetic genealogy” means the use of DNA testing in combination with traditional genealogical methods to infer relationships between persons and determine ancestry.
- “Investigative genetic genealogy” means the application of genetic genealogy and law enforcement investigative techniques to develop investigative leads in unsolved violent crimes and provide investigative leads as to the identity of unidentified human remains and living unidentified missing persons.
- “Investigative genetic genealogy information and materials” means the information, records, and DNA records created or collected by or on behalf of a law enforcement agency conducting investigative genetic genealogy research, and includes the names and personal identifying information of persons identified through the use of genealogy databases, traditional genealogical methods, or other investigative means. The term does not include the name or personal identifying information of:
  - The donor of a biological sample attributable to a perpetrator; or
  - A person identified through investigative genetic genealogy who is a witness to or has personal knowledge related to the crime under investigation.
- “Traditional genealogical methods” means the use of genealogical databases and historical records to trace the family lineage of a person.

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<sup>43</sup> CNN News, “*Hearing details ghastly crimes of Golden State Killer as he pleads guilty to killings*,” Elliott C. McLaughlin, Stella Chan, June 29, 2020, available at <https://www.cnn.com/2020/06/29/us/golden-state-killer-plea-expected/index.html#:~:text=DeAngelo%20pleaded%20guilty%20to%2013,as%2013%20counts%20of%20kidnapping> (last visited Mar. 30, 2023).

<sup>44</sup> Florida Department of Law Enforcement, News, *FDLE Genetic Genealogy Investigations program solves cold cases in first year*, available at <https://www.fdle.state.fl.us/News/2019/October/FDLE-Genetic-Genealogy-Investigations-program-solve> (last visited Mar. 30, 2023).



With specific exceptions, investigative genetic genealogy information and materials are made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution by the bill.

The bill creates an exception to the public records exemption, and provides that a law enforcement agency may disclose investigative genetic genealogy information and materials:

- In furtherance of its official duties and responsibilities; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

Investigative genetic genealogy information and materials, including a single nucleotide polymorphism or whole genome sequencing profile, or a portion thereof must be disclosed pursuant to a court order in furtherance of a criminal prosecution. If a court orders that investigative genetic genealogy materials be disclosed, the recipient of the records or information must maintain the confidentiality of those records or information and may only disclose them publicly as needed for purposes of a criminal prosecution, as determined by the court.

**Section 2** provides a statement of public necessity for the public records exemption created by the bill and for its retroactive application. The bill states that:

- Investigative genetic genealogy is an advanced investigative tool that uses law enforcement agency investigative resources and traditional genealogical research in collaboration with crime laboratories, private vendor laboratories, and companies or organizations that provide genealogy services and information to the public.
- Investigative genetic genealogy allows law enforcement agencies to generate an investigative lead on an unknown perpetrator. The investigative lead aids law enforcement agencies in determining potential donors of crime scene samples, which can be confirmed or refuted by a crime laboratory for use in legal proceedings.
- Convictions and exonerations have been aided by the use of investigative genetic genealogy.
- The same techniques are also used in missing persons and unidentified human remains cases.
- Investigative genetic genealogy is a valuable tool to solve violent crimes and to hold accountable perpetrators who may otherwise roam freely and undetected in society.
- Traditional forensic DNA testing attempts to identify the possible donor of a crime scene sample through matches in law enforcement agencies' DNA databases that consist of short tandem repeat DNA databases.
- The use of investigative genetic genealogy differs from traditional law enforcement agency investigative techniques because it uses advanced DNA testing to develop a single nucleotide polymorphism or a whole genome sequencing profile from the unknown crime scene DNA, which is then uploaded into a public genealogy database and used to locate personal identifying information for possible relatives and ancestors who participate in the databases.
- Individuals whose names, contact information, or other family associations are available in these databases may, and routinely, have no association with or knowledge of the perpetrator or the crime that a law enforcement agency is investigating.
- The first publicized use of investigative genetic genealogy involved the Golden State Killer cases in California. The publicity surrounding law enforcement agencies' use of genetic genealogy led individuals, genealogy service providers, genealogical testing companies, and privacy advocates and ethicists to express privacy concerns.

- Private companies have since strictly limited or precluded law enforcement agency access to genetic genealogy databases due to fear that individuals who are biologically related to a perpetrator but unassociated with the crime may be identified, harassed, and even victimized.
- Law enforcement agency use of investigative genetic genealogy materials has been restricted to violent crimes and unidentified human remains, and companies employ opt-in features for customers.
- Failure to properly protect and limit the disclosure of investigative genetic genealogy information and materials will hinder law enforcement agencies' ability to use this valuable method to solve violent crimes and provide closure to the family members of victims of these heinous acts.
- Often, unidentified human remains are homicide victims, so protection of investigative genetic genealogy tools and information is equally important in giving names to these decedents as well as to their perpetrators.

The public records exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 3** provides that the bill takes effect on July 1, 2023.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties or municipalities to take an 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.

##### **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 investigative genetic genealogy information and materials, 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 investigative genetic genealogy materials and information. This bill exempts only investigative genetic genealogy information and materials 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:**

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

**C. Government Sector Impact:**

The bill may have a minimal fiscal impact on the department for experiencing additional workload related to the redaction of records in responding to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the section 119.071 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on April 5, 2023:**

The committee substitute does the following:

- Removes the definitions for “Single nucleotide polymorphism” and “Whole genome sequencing.”
- Adds a definition for “DNA record” to mean all information associated with the collection and analysis of a person’s DNA sample, including the distinguishing characteristics collectively referred to as a DNA profile, and includes a single polymorphism and a whole genome sequencing.
- Makes conforming changes to use the term “DNA record” throughout the bill.

- B. **Amendments:**

None.