

**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 Children, Families, and Elder Affairs

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**BILL:** CS/SB 786

**INTRODUCER:** Children, Families, and Elder Affairs Committee and Senator Burgess

**SUBJECT:** Public Records/Special Persons Registry

**DATE:** March 28, 2023      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia _____	Cox _____	CF _____	<b>Fav/CS</b> _____
2.	_____	_____	CJ _____	_____
3.	_____	_____	RC _____	_____

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 786 creates an exemption from the public records requirements of s. 119.07(1), F.S., and section 24(a), Art. I of the Florida Constitution for the following information relating to the enrollment of individuals on the Special Needs Registry (SNR) created by SB 784:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the SNR. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
- A county emergency management agency;
- A local fire department; or
- As otherwise specifically authorized by the bill.

The bill provides for an Open Government Sunset Review and contains a statement of public necessity as required by the State Constitution.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before the effective date of the act.

The bill is not expected to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill provides that the act shall take effect on the same date that SB 784 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 784 has an effective date of January 1, 2024.

## II. Present Situation:

### Public Records Law

The State 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> This 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 who acts on behalf of the government.<sup>2</sup>

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>3</sup> The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>4</sup>

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes that relate to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.<sup>5</sup> Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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.

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

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

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public 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>

Only the Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.<sup>10</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions<sup>11</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<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 (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>16</sup> with specified exceptions.<sup>17</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset

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

<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 violations of those laws.

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

<sup>10</sup> *Id.*

<sup>11</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>12</sup> FLA. CONST., art. I, s. 24(c)

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

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

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

<sup>16</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

<sup>17</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.

date.<sup>18</sup> In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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>19</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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>20</sup>
- The release of sensitive personal information would be defamatory or jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>21</sup> or
- It protects trade or business secrets.<sup>22</sup>

The Act also requires specified questions to be considered during the review process.<sup>23</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>24</sup> If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is 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>25</sup>

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<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

<sup>20</sup> Section 119.15(6)(b)1., F.S.

<sup>21</sup> Section 119.15(6)(b)2., F.S.

<sup>22</sup> Section 119.15(6)(b)3., F.S.

<sup>23</sup> Section 119.15(6)(a), F.S. The specific 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>24</sup> FLA. CONST. art. I, s. 24(c).

<sup>25</sup> Section 119.15(7), F.S.

## Developmental Disabilities

Developmental disabilities<sup>26</sup> include autism, cerebral palsy, spina bifida, intellectual disabilities, Down syndrome, Prader-Willi syndrome, and Phelan-McDermid syndrome.<sup>27</sup>

Cerebral palsy<sup>28</sup> is a group of disabling symptoms of extended duration, which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles.<sup>29</sup>

Spina bifida<sup>30</sup> is a birth defect in the vertebral column in which part of the spinal cord, which is normally protected within the vertebral column, is exposed. Spina bifida is caused by the failure of the neural tube to close during embryonic development. The neural tube is the embryonic structure that gives rise to the brain and spinal cord. People with spina bifida can have difficulty with bladder and bowel incontinence, cognitive (learning) problems, and limited mobility.<sup>31</sup>

Individuals suffering from intellectual disabilities have significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior, which manifests before the age of 18.<sup>32</sup> Such individuals have certain limitations in both mental functioning and in adaptive skills such as communicating, self-care, and social skills. These limitations will cause a person to learn and develop more slowly. People with intellectual disabilities may take longer to learn to speak, walk, and take care of their personal needs such as dressing or eating.<sup>33</sup>

Down syndrome is a genetic disorder caused when abnormal cell division results in extra genetic material from chromosome 21. This genetic disorder, also known as trisomy 21, varies in severity, causes lifelong intellectual disability and developmental delays, and, in some people, causes health problems.<sup>34, 35</sup>

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<sup>26</sup> Developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

<sup>27</sup> Agency for Persons with Disabilities, *Long-Range Program Plan (2022)*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23172&DocType=PDF> (last visited March 22, 2023) (hereinafter cited as “The Long-Range Plan”).

<sup>28</sup> Section 393.063(6), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Spina bifida is defined in statute as a medical diagnosis of spina bifida cystica or myelomeningocele. Section 393.063(41), F.S.

<sup>31</sup> The Long-Range Plan, p. 79.

<sup>32</sup> Section 393.063(24), F.S. For the purposes of this definition, the term “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The term “significantly sub-average general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

<sup>33</sup> The Long-Range Plan, p. 73.

<sup>34</sup> *Id.* at 69.

<sup>35</sup> Down syndrome is defined in statute as a disorder caused by the presence of an extra chromosome 21. Section 393.063(15), F.S.

Prader-Willi syndrome<sup>36</sup> is a complex genetic condition that affects many parts of the body. In infancy, this condition is characterized by weak muscle tone, feeding difficulties, poor growth, and delayed development. Beginning in childhood, affected individuals develop an insatiable appetite and chronic overeating. As a result, most experience rapid weight gain leading to obesity. People with Prader-Willi syndrome typically have an intellectual disability or a learning disability and behavioral problems.<sup>37</sup>

Phelan-McDermid syndrome<sup>38</sup> is a rare condition due to a chromosomal abnormality. Symptoms vary in range and severity but often include low muscle tone, difficulty moving, absent-to-severely delayed speech, autistic features, moderate-to-profound intellectual disability, and epilepsy.<sup>39</sup>

### ***Autism***

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.<sup>40</sup> Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.<sup>41</sup> The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.<sup>42</sup> The CDC also estimates that over 5.4 million adults have ASD.<sup>43</sup>

### ***Interactions with Law Enforcement for Individuals with Autism***

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.<sup>44</sup> Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation

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<sup>36</sup> Prader-Willi syndrome is defined in statute as an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior. Section 393.063(29), F.S.

<sup>37</sup> The Long-Range Plan, p. 77

<sup>38</sup> Phelan-McDermid Syndrome is defined in statute as a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech. Section 393.063(28), F.S.

<sup>39</sup> The Long-Range Plan, p. 77.

<sup>40</sup> Section 393.063(5), F.S.

<sup>41</sup> Section 627.6686(2)(b), F.S.

<sup>42</sup> The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at <https://www.cdc.gov/ncbddd/autism/data.html> (last visited March 22, 2023).

<sup>43</sup> The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States*, available at <https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html> (last visited March 22, 2023).

<sup>44</sup> Randy Lambert, *How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community*, *Child and Family Law Journal*, p. 48 (2018), available at <https://lawpublications.barry.edu/cflj/vol6/iss1/3> (last visited March 22, 2023).

poses a particular problem in encounters with law enforcement.<sup>45</sup> Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.<sup>46</sup> Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.<sup>47</sup> The individual may cover his or her ears and shriek, not knowing how or where to get help.<sup>48</sup> The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.<sup>49</sup>

### **Mental Health and Mental Illness**

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.<sup>50</sup>

The primary indicators used to evaluate an individual's mental health are:

- **Emotional well-being-** Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being-** Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being-** Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.<sup>51</sup> Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.<sup>52</sup> During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22 percent.<sup>53</sup>

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<sup>45</sup> Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, Aele Monthly Law Journal, p. 106 (2009), available at <https://www.aele.org/law/2009all07/2009-07MLJ101.pdf> (last visited March 22, 2023).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> World Health Organization, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/factsheets/detail/mental-health-strengthening-our-response> (last visited March 22, 2023).

<sup>51</sup> *Id.*

<sup>52</sup> National Institute of Mental Health (NIH), *Mental Illness*, <https://www.nimh.nih.gov/health/statistics/mental-illness> (last visited March 22, 2023).

<sup>53</sup> *Id.*

Some examples of common mental health illnesses or disorders that can negatively impact how a person interacts with others, such as law enforcement officers, include schizophrenia, bipolar disorder, borderline personality disorder, and antisocial personality disorder.<sup>54</sup>

### **Alzheimer's Disease**

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.<sup>55</sup>

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.<sup>56</sup> The projected number of Floridians with Alzheimer's disease is estimated to increase by 24% to 720,000 individuals by 2025.<sup>57</sup>

### ***Interactions with Law Enforcement for Individuals with Alzheimer's and Dementia***

Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.<sup>58</sup> Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.<sup>59</sup>

### **Florida Crime Information Center (FCIC) System**

The Florida Crime Information Center (FCIC) system is an electronic database that provides criminal justice agencies with access to federal and state criminal justice information. The FCIC is managed by FDLE and contains information as reported to FDLE by law enforcement agencies through the state.<sup>60</sup>

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<sup>54</sup> See National Alliance Mental Illness, *Mental Health Disorders*, available at <https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions>; Psychiatry Online, *Contact Between Police and People With Mental Disorders: A Review of Rates*, available at <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201500312> (all sites last visited March 22, 2023).

<sup>55</sup> Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures*, available at <https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf> (last visited March 22, 2023).

<sup>56</sup> The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at [https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021\\_FINAL.pdf](https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf) (last visited March 22, 2023).

<sup>57</sup> *Id.*

<sup>58</sup> Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at [https://www.alz.org/national/documents/safereturn\\_lawenforcement.pdf](https://www.alz.org/national/documents/safereturn_lawenforcement.pdf) (last visited March 22, 2023).

<sup>59</sup> *Id.*

<sup>60</sup> The FDLE, *The FCIC*, available at <https://web.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf> (last visited March 22, 2023).

## Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.<sup>61</sup> Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources, both human and financial, during emergencies;
- Give community members peace of mind; and
- Promote community partnerships in responding to special needs community members.<sup>62</sup>

Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.<sup>63</sup>

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.<sup>64</sup>

### *Confidentiality of Information*

Voluntary registry systems generally contain large amounts of personal and sensitive information. Confidentiality concerns, coupled with a general fear of law enforcement prevalent in some communities, could hinder community willingness to participate in voluntary registry programs.<sup>65</sup> Some community members may be hesitant to participate due to fear exploitation of registry data.<sup>66</sup> Others fear that registry information collected may be used to violate the rights of special needs individuals by inappropriately releasing the information to outside parties and entities.<sup>67</sup>

Some agencies utilizing voluntary registry systems use disclaimers, waivers, or releases on voluntary registry systems' registration forms or questionnaires to notify registrants that providing data is voluntary and to ensure that registrants and their caregivers know that information will be used solely for the purpose of assisting first responders in providing

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<sup>61</sup> The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at [https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry\\_0.pdf](https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf) (last visited March 22, 2023).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 3.

<sup>65</sup> *Id.* at 21.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

service.<sup>68</sup> Other individuals have also expressed concerns regarding Health Insurance Portability and Accountability Act (HIPAA) compliance of registry information collection and storage.<sup>69</sup>

### III. Effect of Proposed Changes:

The bill amends the proposed s. 402.88, F.S., which would be created by SB 784. The bill creates an exemption from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution for the following information relating to the enrollment of individuals on the SNR created by SB 784:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the SNR. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
- A county emergency management agency;
- A local fire department; or
- As otherwise specifically authorized by the bill.

Any of the above-listed agency entities are permitted to disclose information otherwise deemed confidential and exempt by the bill to others not specifically listed only under the following circumstances:

- With the express written consent of the registry enrollee or the legally authorized representative of such enrollee;
- In a medical emergency;
- By court order, upon a finding of good cause;
- To another governmental agency when needed for the performance of its duties and responsibilities; or
- In the interest of public safety, to:
  - Assist in locating the enrollee; or
  - Promote the safety or well-being of the enrollee, as determined by the law enforcement agency.

The bill includes a public necessity statement, specifying the need to make all records, data, information, correspondence, and communications relating the enrollment of persons in the SNR confidential and exempt from Florida's public records laws. The bill provides that such records are likely to include confidential medical information and sensitive personal information of individuals on the SNR. The bill states that the potential disclosure of such information will deter enrollment, thereby depriving law enforcement of information which would enable them to interact with those eligible for enrollment in safe and appropriate ways.

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

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

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before the effective date of the act.

The bill provides that the act shall take effect on the same date that SB 784 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 784 has an effective date of January 1, 2024.

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

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

None.

##### **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, data, information, correspondence, and communication relating to the enrollment of individuals on the SNR. 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 sensitive personal information, and confidential medical information, of individuals enrolled in the SNR. This bill exempts only such information 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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 402.88 of the Florida Statutes, if created by SB 784.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Children, Families, and Elder Affairs on March 27, 2023**

The Committee Substitute links the effective date of SB 786 to the effective date of SB 784.

B. Amendments:

None.