

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 350

INTRODUCER: Senator Grall

SUBJECT: Public Records/Crime Victims

DATE: January 9, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wyant</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 350 amends s. 119.071, F.S., to revise the current public records exemption from inspection and copying requirements for documents that identify a person as a victim of a crime. The bill specifies any *public record* that reveals the identity of a victim of crime, *including his or her name or personal identification number, home or employment address, or personal assets, or any other information or record that could be used to locate, intimidate, harass, or abuse the victim or the victim's family, which public record is generated or received by any agency that regularly generates or receives information from or concerning the victims of crime, is exempt from public records inspection and copying requirements.*

The bill also requires the identity of an officer contained in a public record which reveals that the officer was involved in a use of force incident who becomes a victim be held confidential and exempt for a period of 72 hours immediately following such incident. The confidentiality may be extended if the employing agency head provides written findings to the public stating the necessity of extending the confidentiality of the officer's identity. However, such extension may not exceed 60 days. An officer must be acting in the scope of his or her employment or official duties for such information to become confidential and exempt.

The bill provides definitions for "employing agency head," "officer," "use of force incident," and "victim."

The exemption applies to information held by an agency on or after July 1, 2026, and is repealed on October 2, 2031, unless reenacted by the Legislature.

The bill provides a statement of necessity as required by the State Constitution, and because it expands the 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 may have an indeterminate fiscal impact. See *Section V. Fiscal Impact Statement*.

The bill takes effect July 1, 2026.

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 branch and local government agencies.

Violation of Public Record Law

Any person who willfully and knowingly violates any public record law commits a first-degree misdemeanor.^{5,6}

Pursuant to s. 119.105, F.S., any person who comes into possession of exempt or confidential information contained in police reports is prohibited from using that information for any commercial solicitation of the victims or the relatives of the victims of the reported crimes or accidents, and is further prohibited from knowingly disclosing such information to any third party for the purpose of such solicitation during the period of time that the information remains exempt or confidential. Any person who violates such prohibitions commits a third-degree felony.^{7,8}

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2024-2026) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2024-2026).

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

⁵ Section 119.10(2)(a), F.S.

⁶ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁷ Section 119.10(2)(b), F.S.

⁸ A third-degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act⁹ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁰ public records or open meetings exemptions, with specified exceptions.¹¹ 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 date.¹² 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.¹³ 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 program, and administration would be significantly impaired without the exemption;¹⁴
- 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;¹⁵ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷ 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 again required.¹⁸ If the exemption is continued without substantive changes

⁹ Section 119.15, F.S.

¹⁰ 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.

¹¹ 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.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ 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?

¹⁸ See generally s. 119.15, F.S.

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.¹⁹

Marsy's Law

On November 6, 2018, a constitutional revision to article I of the State Constitution was approved by voters; such revision is colloquially known as “Marsy’s Law.”²⁰ Marsy’s Law provides crime victims specific rights, including the right:

- To be free from intimidation, harassment, and abuse.
- To be reasonably protected from the accused and any person acting on behalf of the accused within the judicial process.
- To prevent the disclosure of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim.²¹

Under Marsy’s Law, a “victim” means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term includes the victim’s lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term does not include the accused.²²

Pursuant to article I, section 16(c) of the Florida Constitution, the victim can assert and seek enforcement of such rights in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority must act promptly on such a request, affording a remedy by due course of law for the violation of any right.²³

In 2023, the Florida Supreme Court held that Marsy’s Law “does not guarantee to a victim the categorical right to withhold his or her name from disclosure.”²⁴ The Court held that “Marsy’s Law speaks only to the right of victims to ‘prevent the disclosure of information or records that could be used to locate or harass’ them or their families” and that “one’s name, standing alone, is not that kind of information or record; it communicates nothing about where the individual can be found and bothered.”²⁵ The Court noted that by reading Marsy’s Law to only shield information that can be used to locate or harass, rather than identify, it can give effect to Marsy’s Law while also protecting a defendant’s right to confront adverse witnesses at trial.

Additionally, the question of whether police officers acting in an official capacity can be Marsy’s Law “victims” was presented to the Court. However, the Court decided to answer the question of

¹⁹ Section 119.15(7), F.S.

²⁰ Art. I, s. 16(b)-(e), Fla. Const.

²¹ Art. I, s. 16(b), Fla. Const.

²² Art. I, s. 16(e), Fla. Const.

²³ Art. I, s. 16(c), Fla. Const.

²⁴ *City of Tallahassee v. Fla. Police Benv. Assn., Inc.*, 375 So. 3d 178, 183 (2023).

²⁵ *Id.* at 184 (internal citations omitted).

anonymity stating, “we decide only what Marsy’s Law says and does not say; we do not pass upon the validity of any statutory right of certain persons, in certain situations, to withhold their identities from disclosure.”²⁶

Public Record Exemption for the Victim of a Crime

Section 119.071(2)(j), F.S., provides a public record exemption for any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and also identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime.²⁷ This provision has been interpreted to exempt only those documents received, not generated by, an agency; police reports are not included in this exemption.²⁸

Additionally, any information not otherwise held confidential or exempt from public record requirements which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from public record requirements upon written request by the victim, which request must include official verification that an applicable crime has occurred. Such an exemption will cease five years after the receipt of the written request.²⁹

III. Effect of Proposed Changes:

The bill amends s. 119.071, F.S., to revise the public record exemption for documents that identify a person as a victim of a crime. The bill specifies any *public record* that reveals the identity, *including name or personal identification number*, home or employment address, or personal assets of a victim, *or any other information or record that could be used to locate, intimidate, harass, or abuse the victim or the victim’s family*, which *public record is generated or received by any agency that regularly generates or receives information from or concerning the victims of crime*, is exempt.

This portion of the bill expands the application of the exemption to include any public record, whether a document, an audio recording, or video recording, rather than just a written or electronic document. The exemption is also expanded to include public records that are generated by the agency, rather than just those records that are received by the agency. Lastly, the exemption is expanded to include any public record that reveals the identity of a victim—not just those records which evince the person (and his or her identity) as a victim of a crime.

The bill additionally requires that a public record which reveals the identity of an officer who is involved in a use of force incident who also becomes a victim in the same incident, or one related to it, to be held confidential and exempt for a period of 72 hours immediately following such incident. The confidentiality may be extended if the employing agency head provides

²⁶ *Id.* at 188.

²⁷ Section 119.071(2)(j)1., F.S.

²⁸ Op. Att’y Gen. Fla. 90-80 (1990).

²⁹ *Id.* Notwithstanding this exemption, any state or federal agency that is authorized to have access to such documents by any provision of law must be granted access in the furtherance of such agency’s statutory duties.

written findings to the public before the 72-hour period ends stating the necessity of extending the confidentiality of the officer's identity. However, such extension may not exceed 60 days. An officer must be acting in the scope of his or her employment or official duties for such information to become confidential and exempt.

The bill provides the following definitions:

- "Employing agency head" means an elected or appointed head official of an employing agency as defined in s. 943.10(4), F.S.,³⁰ who is certified under s. 943.13, F.S.
- "Officer" means any full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer certified under s. 943.13, F.S.
- "Use of force incident" means any incident that occurs within the scope of an officer's employment or official duties and involves the officer's use of deadly force as defined in s. 776.06, F.S.,³¹ or any other use of force that results in great bodily harm.
- "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon showing that the interests of such person would be in actual or potential conflict with the best interests of the victim. The term does not include the accused.

The exemption applies to information held by an agency on or after July 1, 2026, and is repealed on October 2, 2031, unless reenacted by the Legislature.

The bill provides a statement of necessity as required by the State Constitution. The public necessity statement provides that exempting records or documents from s. 119.07(1), F.S., and article I, section 24(a) of the State Constitution which identify a crime victim, the victim's family, or any information that may be used to threaten or harass the victim or the victim's family is a necessity to prevent the possibility of further trauma and the release of such records may deter crime victims from cooperating with law enforcement and reporting criminal acts.

The bill takes effect July 1, 2026.

³⁰ "Employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term includes any private entity that has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility. The term also includes Class I, Class II, or Class III railroad that employs special officer. Section 943.10(4), F.S.

³¹ As applied to a law enforcement officer or correctional officer acting in the performance of his or her official duties, the term "deadly force" means force that is likely to cause death or great bodily harm and includes, but is not limited to, the firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm, and the firing of a firearm at a vehicle in which the person to be arrested is riding. The term "deadly force" does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a less-lethal munition. Section 776.06, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require the cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 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 from the public records inspection and copying requirements. This bill expands an exemption for records pertaining to victims of crimes and officers involved in a use of force incident; therefore, the bill requires a two-thirds vote of each chamber for enactment.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption from the public records inspection and copying 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, section 24(c) of the State Constitution requires an exemption from the public records inspection and copying requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect victims of crime and such victim's family members, and the bill exempts only records pertaining to those persons from the public records inspection and copying requirements.

The bill requires any public record that reveals the identity, location information, or personal assets for a crime victim to be made exempt. The bill additionally makes a public record which reveals the identity of law enforcement officers involved in use of force incidents who also become the victim of a crime in the course of said incident, or one related thereto, confidential and exempt for 72 hours, and for an additional 60 days if an extension is necessary.

The exemption as applied to *any public record*, may be overly broad as it expands the law to any public record that is generated or received by an agency. As written, the bill may exempt an entire record rather than allowing for the redaction of information from such record.

Additionally, the bill may be overly broad by removing a requirement that such record identifies a person as the victim of a crime. By removing this requirement, documents

containing a victim's information in unrelated cases may become exempt. For instance, a reference to a witness, who happens to be a victim in an unrelated case, may make the entire document exempt from public records inspection and copying requirements.

C. **Trust Funds Restrictions:**

None identified.

D. **State Tax or Fee Increases:**

None identified.

E. **Other Constitutional Issues:**

Marsy's Law

If a court determines that officers are not victims for the purpose of Marsy's Law, the language in the bill may provide new protections, in particular for officers, in addition to those for other victims under current constitutional requirements.

Delegation of Authority

The bill empowers the head of an officer's employing agency to extend the public record exemption established in this bill for up to 60 days based on his or her finding of necessity. This may constitute an unconstitutional delegation of the Legislature's authority.

The Legislature alone has constitutional authority over public records exemptions. The bill permits an agency head to decide whether to extend a public records exemption, thereby creating a protection where one would not otherwise exist. It may be an unconstitutional delegation of power to grant the executive branch, through an agency head, the discretion to extend this public record exemption.

The bill does not provide standards to guide the agency head in determining whether or not to extend the exemption. This may constitute a separation of powers issue because "discretionary authority granted to the executive branch of government must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed."³² To grant such authority without clear limits may be an unconstitutional delegation of the power to make law.³³

V. Fiscal Impact Statement:

A. **Tax/Fee Issues:**

None.

³² *Fla. Home Builders Ass'n v. Div of Labor, Bureau of Apprenticeship*, 367 So. 2d 219, 220 (Fla. 1979).

³³ FLA. CONST. art. II, s. 3.

B. Private Sector Impact:

The private sector will be subject to the costs 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 increase costs minimally for agencies that hold records containing personal identifying information of current and former private investigators and their spouses and children, because staff responsible for complying with public records requests may need training related to the new public record exemption. Additionally, agencies may incur costs associated with redacting the exempt information prior to releasing a record. However, the costs should be absorbed as part of the day-to-day responsibilities.

VI. Technical Deficiencies:

The bill defines "employing agency head" as an elected or appointed head official of an employing agency *and* who is certified under s. 943.13, F.S. A city manager may serve in the role of the head of an employing agency, however, a city manager is not required to be certified under s. 943.10, F.S. Therefore, a city manager may not meet the bill's definition of "employing agency head".

Line 44 defines "victim" to include a "parent or guardian of a minor". This appears to refer to any parent or guardian of any minor, and could be amended to square with the intent of the bill by referring instead to a parent or guardian of *a victim who is* a minor.

The bill includes in the defined term "victim" the next of kin of a homicide victim. For consistency, the Legislature may wish to use the term "family" instead.

The bill exempts information in a public record that could be used to locate, intimidate, harass, or abuse the victim or the victim's family. "Family" (used on line 53) is not defined, and could include any number of relatives, whether or not they have ties to the victim.

Lines 53-54 delete the requirement that a public record which reveals the identity of a victim also identify the person as a victim of a crime. Without notice from the victim of his or her status as a victim, the agency that holds the record would likely be unable to identify the record as subject to this exemption.

The bill expands the agencies subject to this exemption by applying the exemption to those agencies that either generate or receive a record with a victim's identifying information. An amendment to apply the exemption to an agency that holds a record which reveals the identity of a victim would provide consistency of terminology throughout ch. 119, F.S.

VII. Related Issues:

Section 119.0714, F.S., excludes information made part of a court file from the exemptions provided for in ch. 119, F.S., except those documents specifically closed by a court or specifically listed in law. Additionally, Florida courts have consistently held that the judiciary is

not an “agency” for purposes of ch. 119, F.S.³⁴ However, art. I, s. 34 of the State Constitution still provides a constitutional right of access to judicial records. In order to balance the separation of powers between the Legislative and Judicial branches, confidentiality of court records is governed by court rule and court decisions.³⁵ Florida Rule of General Practice and Judicial Administration 2.420, entitled “Public Access to and Protection of Judicial Branch Records”, provides that “the public shall have access to all records of the judicial branch of government except as provided [in the rule].”

Florida courts have also adopted a rule implementing Marsy's Law which sets out definitions of a crime, criminal, victim, and exempt information and the procedure for identifying exempt information in criminal and juvenile court records.³⁶

A statutory update to the exempt status of a victim’s information that is not consistent with the court’s rule implementation of Marsy’s Law regarding confidentiality of a victim’s information within court records may result in distinctions between protections provided by statute and court rule.

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.

³⁴ See, e.g., *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995); *State v. Wooten*, 260 So. 2d 1060, 1069 (Fla. 4th DCA 2018) (“Access to judicial branch records is governed by the rules and decisions of the Florida Supreme Court, not Chapter 119, Florida Statutes.”); and *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992)

³⁵ *State v. Wooten*, 260 So. 2d 1060, 1069 (Fla. 4th DCA 2018).

³⁶ Fla. R. Gen. Prac & Jud. Admin 2.423. Note, for purposes of the Florida Rule of General Practice and Judicial Administration, “confidential,” as applied to information contained within a record of the judicial branch, means that information is exempt from the public right of access under article I, section 24(a). of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. Fla. R. Gen. Prac & Jud. Admin 2.420(b)(4).