

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB APC 18-08 Public Records
SPONSOR(S): Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee	27 Y, 0 N	Kramer	Leznoff

SUMMARY ANALYSIS

Current law provides a public record exemption for active criminal investigative information and criminal intelligence information. The term "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 criminal activity. The term "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, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. These terms do not include the name, sex, age, or address of the victim of a crime, except in certain instances.

The bill creates a public record exemption for the address of a victim of an incident of mass violence. The bill defines the term "incident of mass violence" to mean an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. The bill defines the term "victim" to mean a person killed or injured during an incident of mass violence, not including the perpetrator. The bill also amends the definition of "criminal intelligence information" and "criminal investigative information" to include the address of a victim of mass violence.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no broader than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to administer effectively and efficiently a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁵

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Public Record Exemptions for Victim Information

Current law provides a public record exemption for active criminal investigative information and criminal intelligence information. The term "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 criminal activity.⁷ The term "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, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.⁸ These terms do not include the name, sex, age, and address of the victim of a crime, except in certain instances.⁹

Those instances when victim identifying information, which is criminal investigative or intelligence information, are protected include:

- A victim under the age of 18 of a human trafficking or child abuse offense.

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

⁷ Section 119.011(3)(b), F.S.

⁸ Section 119.011(3)(a), F.S.

⁹ Section 119.011(3)(c), F.S.

- A victim of a sexual offense.¹⁰

Such victim information may only be disclosed by a law enforcement agency (LEA):

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast if the LEA determines that release would assist in locating or identifying a person the LEA believes to be missing or endangered. The information provided must be limited to that needed to identify or locate the victim.
- To another governmental agency in the furtherance of its official duties and responsibilities.¹¹

Current law also provides that certain information about victims of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from public record requirements, but only upon written request by the victim. The written request must include official verification that an applicable crime has occurred.¹²

Effect of the Bill

The bill creates a public record exemption for the address of a victim of an incident of mass violence. The bill defines the term “incident of mass violence” to mean an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. The bill defines the term “victim” to mean a person killed or injured during an incident of mass violence, not including the perpetrator. The bill also amends the definition of “criminal intelligence information” and “criminal investigative information” to include the address of a victim of mass violence.

The bill provides a public necessity statement as required by the State Constitution, specifying that after an incident of mass violence has occurred, victims of such incidents are in a vulnerable state as they assist law enforcement with the case and try to recover from the events that occurred. In some instances, the victim may have been killed or injured leaving their families to deal with the aftermath of the crime. The public availability of such victim’s address may be used to locate the victim or the victim’s family. The availability of such information has allowed people to take advantage of the victims or their families by subjecting the victims or their families to media intrusions at their homes and other unwelcome intrusions into their privacy.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. amends s. 119.071, F.S., creating a public record exemption for the address of a victim of mass violence.

Section 2. amends s. 119.011, F.S., designating the address of a victim of an incident of mass violence as criminal intelligence information and criminal investigative information.

Section 3. provides a public necessity statement.

Section 4. provides an effective date of upon becoming a law.

¹⁰ Section 119.071(2)(h), F.S.

¹¹ Section 119.071(2)(h)2., F.S.

¹² Section 119.071(2)(j), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to 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.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. Because the bill creates a new public record exemption, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for the address of a victim of an incident of mass violence to protect victims of such violence and their families when such individuals are in a vulnerable state. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 27, 2018, the Appropriations Committee adopted an amendment to the bill and reported the bill favorably. The amendment modified the definition of the term "incident of mass violence". The analysis reflects the bill as amended.