

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 20-05 OGSR/Human Trafficking Victims

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Toliver	Smith

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Human trafficking is the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.” An estimated 40.6 million persons were the victims of human trafficking in 2016, with one in four victims being children. Florida law allows a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. The offense must be related to the human trafficking scheme of which the person was a victim or must have been at the direction of an operator of the scheme. The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.

Current law provides a public record exemption for the following criminal intelligence and criminal investigative information:

- Any information that reveals the identity of a person under the age of 18 who is the victim of a crime of human trafficking for labor or services;
- Any information that reveals the identity of the victim of the crime of child abuse;
- Any information that may reveal the identity of a person who is a victim of any sexual offense;
- Any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity; and
- A photograph, videotape, or image of any part of the body of a victim of a crime of certain sexual offenses, including human trafficking involving commercial sexual activity.

Additionally, a separate but related public record exemption provides that criminal intelligence and criminal investigative information that reveals or may reveal the identity of a victim of human trafficking whose criminal history has been expunged or ordered expunged is also confidential and exempt from public records requirements. The information contained in both exemptions may be shared by a law enforcement agency:

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

The bill saves from repeal the public record exemptions, which will repeal on October 2, 2020, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb05.OTM

DATE: 12/5/2019

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer 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.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Human Trafficking

Human trafficking⁵ is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.⁶ An estimated 40.6 million persons were the victims of human trafficking in 2016, with one in four victims being children.⁷ Human traffickers use various techniques to instill fear in victims and to keep them enslaved⁸ including the use of "violence, threats, deception, [and] debt bondage."⁹ Some traffickers keep their victims under lock and key.¹⁰ However, the most frequently used practices are less obvious techniques that include isolating victims from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling the victims' funds by holding the money ostensibly for safekeeping.¹¹ It is estimated that human trafficking "generates \$150 billion dollars in illegal profits a year."¹²

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ The term "human trafficking" is defined to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. Section 787.06(2)(d), F.S.

⁶ Section 787.06(1)(a), F.S.

⁷ *Forced labour, modern slavery and human trafficking*, INTERNATIONAL LABOUR ORGANIZATION, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited Nov. 27, 2019).

⁸ Section 787.06(1)(c), F.S.

⁹ *The Facts*, POLARIS PROJECT, <https://polarisproject.org/human-trafficking/facts> (last visited Dec. 3, 2019).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Profits and Poverty: The Economics of Forced Labour*, INTERNATIONAL LABOUR ORGANIZATION, http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm (last visited Nov. 27, 2019).

Expunction of Human Trafficking Records

In 2013, the Legislature created a process to allow a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. The offense must be related to the human trafficking scheme of which the person was a victim or must have been at the direction of an operator of the scheme.¹³ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Any criminal history record that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.¹⁴

Public Record Exemption under Review

Current law provides a public record exemption for criminal intelligence¹⁵ and criminal investigative information¹⁶ that includes:

- Any information that reveals the identity of the victim of the crime of child abuse;¹⁷
- Any information that may reveal the identity of a person who is a victim of any sexual offense;¹⁸
- A photograph, videotape, or image of any part of the body of a victim of a crime of certain sexual offenses.¹⁹

In 2015, the Legislature passed HB 467 (2015) which expanded the exemption to include:

- Any information that reveals the identity of a person under the age of 18 who is the victim of a crime of human trafficking for labor or services;²⁰
- Any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity;²¹ and
- A photograph, videotape, or image of any part of the body of a victim of a crime of human trafficking involving commercial sexual activity.²²

Additionally, HB 467 (2015) provided that criminal intelligence and criminal investigative information that reveals or may reveal the identity of a victim of human trafficking whose criminal history has been expunged or ordered expunged is also confidential and exempt from public records requirements.²³

The criminal intelligence and criminal investigative information is confidential and exempt²⁴ from public records requirements. However, it may be shared by a law enforcement agency:²⁵

¹³ Chapter 2013-99, L.O.F.; codified as s. 943.0583, F.S.

¹⁴ Section 943.045(16), F.S.

¹⁵ The term “criminal intelligence information” is defined to mean 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. Section 119.011(3)(a), F.S.

¹⁶ The term “criminal investigative information” is defined to mean 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. Section 119.011(3)(b), F.S.

¹⁷ See ch. 827, F.S.

¹⁸ See chs. 794, 796, 800, 827, and 847, F.S.

¹⁹ See s. 810.145, F.S., and chs. 794, 796, 800, 827, and 847, F.S.

²⁰ See s. 787.06(3)(a), F.S.

²¹ See ss. 787.06(3)(b), (d), (f), and (g), F.S.

²² *Id.*

²³ Section 943.0583(11), F.S.

²⁴ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, Aug. 1, 1985).

- In the furtherance of its official duties and responsibilities;
- To another governmental agency in the furtherance of its official duties and responsibilities; or
- For print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered. The information provided should be limited to information needed to identify or locate the victim.²⁶

The 2015 public necessity statement²⁷ for the exemption provides that:

The Legislature finds that it is important to strengthen the protections afforded victims of human trafficking for labor who are minors and victims of human trafficking for commercial sexual activity, regardless of age, in order to ensure their privacy and to prevent their revictimization by making such information confidential and exempt. The identity of these victims is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputation of the victims. Protecting the release of identifying information of such victims protects them from further embarrassment, harassment, or injury. The Legislature also finds that it is a public necessity that information in the investigative or intelligence records related to a criminal history record ordered expunged under s. 943.0583, Florida Statutes, which would or could reasonably be expected to reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under s. 943.0583, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been charged with crimes allegedly committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal charges remain on record and accessible to potential employers and others.²⁸

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2020, unless reenacted by the Legislature.

During the 2019 interim, subcommittee staff sent a questionnaire to the Department of Law Enforcement (FDLE), the Department of Juvenile Justice, as well as to each sheriff's office and each police department to gather information concerning the implementation of the exemptions.²⁹ Of the respondents who acknowledged that they possess public records covered by the exemptions, a large majority believed that the exemptions should be reenacted without changes.³⁰ FDLE in its response indicated that the exempt information has been released for broadcast in the form of Amber Alerts.³¹ Additionally, FDLE stated that according to its records 59 people have met the criteria to have their criminal history record expunged under the human trafficking victim expunction provision.³² Most

²⁵ The term "criminal justice agency" is defined to mean any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections. Section 119.011(4), F.S.

²⁶ Sections 119.071(2)(h)2. and 943.0583(11)(b), F.S.

²⁷ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

²⁸ Chapter 2015-146, L.O.F.

²⁹ Open Government Sunset Review Questionnaire, responses on file with the Oversight, Transparency & Public Management Subcommittee.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

respondents indicated that they believed the exemptions had accomplished their purpose of protecting victims of human trafficking by preventing revictimization and minimizing the trauma to those persons.³³

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemptions thereby reenacting the public record exemptions for certain criminal intelligence and criminal investigative information.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for certain criminal intelligence and criminal investigative information related to victims of various crimes.

Section 2 amends s. 943.0583, F.S., to save from repeal the public record exemption for certain criminal intelligence and criminal investigative information that reveals or may reveal the identity of a victim of human trafficking whose criminal history has been expunged or ordered expunged.

Section 3 provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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.

³³ *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority on an agency nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.