

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 467 Pub. Rec./Human Trafficking Victims

**SPONSOR(S):** Spano and others

**TIED BILLS:** CS/HB 465 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Aziz	Cunningham
2) Government Operations Subcommittee		Toliver	Williamson
3) Judiciary Committee			

### SUMMARY ANALYSIS

Currently, s. 119.071(2)(h), F.S., makes specified criminal intelligence information or criminal investigative information confidential and exempt from public records requirements. Similarly, s. 943.0583, F.S., provides a public records exemption for criminal history records of a human trafficking victim that have been ordered expunged.

This bill, which is linked to the passage of HB 465, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements 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 proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S.; 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 proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S.

The bill also amends s. 943.0583, F.S., making the above-described criminal intelligence and criminal investigative information confidential and exempt from public records requirements under the section providing expunction for human trafficking victims.

The bill authorizes release of the confidential and exempt information by a law enforcement agency in certain instances. It also provides for retroactive application of the public records exemptions.

The bill provides for repeal of the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill could have a minimal fiscal impact on state and local governments.

**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 expands public records exemptions; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records Laws**

###### Florida Constitution

Article I, Section 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may exempt records from the requirements of Article I, Section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.<sup>2</sup>

###### Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Section 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act<sup>3</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>4</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:<sup>5</sup>

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2<sup>nd</sup> of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> The Act also requires specified questions to be considered during the review process.<sup>7</sup>

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<sup>1</sup> Article I, Sec. 24(a), FLA. CONST.

<sup>2</sup> Article I, Sec. 24(c), FLA. CONST.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 119.15(6)(b), F.S.

<sup>5</sup> *Id.*

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

<sup>7</sup> Section 119.15(6)(a), F.S., states that 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 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?

## Public Record Exemption for Certain Agency Investigation Information

Currently, s. 119.071(2)(h), F.S., makes specified criminal intelligence information<sup>8</sup> or criminal investigative information<sup>9</sup> confidential and exempt<sup>10</sup> from public records requirements. This information includes:<sup>11</sup>

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S. (child abuse);
- Any information, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution); ch. 800, F.S. (lewdness and indecent exposure); ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity); and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity), regardless of whether the photograph, videotape, or image identifies the victim.

Confidential and exempt criminal investigative and criminal intelligence information may be disclosed by a law enforcement agency:<sup>12</sup>

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;<sup>13</sup> or
- To another governmental agency in the furtherance of its official duties and responsibilities.

This public records exemption is scheduled to repeal on October 2, 2016, pursuant to the Open Government Sunset Review Act.<sup>14</sup>

## Human Trafficking Victim Expunction

In 2013, the Legislature passed legislation that authorized a victim of human trafficking to petition the court<sup>15</sup> for the expunction of any *conviction* for an offense<sup>16</sup> committed while he or she was a victim of human trafficking.<sup>17</sup> In 2014, the Legislature expanded what could be expunged to include records

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<sup>8</sup> Section 119.011(3)(a), F.S., defines “criminal intelligence information” 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.

<sup>9</sup> Section 119.011(3)(b), F.S., defines “criminal investigative information” 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.

<sup>10</sup> There is a difference between records the Legislature designates as 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 *Op. Att’y Gen. Fla. 85-62* (1985).

<sup>11</sup> Section 119.071(2)(h)3., F.S., requires the exemption to apply to confidential and exempt criminal intelligence and criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

<sup>12</sup> Section 119.071(2)(h)2., F.S.

<sup>13</sup> Section 119.071(2)(h)2.c., F.S., provides the information disclosed should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

<sup>14</sup> Section 119.071(2)(h)4., F.S.

<sup>15</sup> Section 943.0583(4), F.S., requires a petition under this section to be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition or for other reasons consistent with the purpose of s. 943.0583, F.S.

<sup>16</sup> Except an offense listed in s. 775.084(1)(b)1., F.S.

<sup>17</sup> Chapter 2013-98, L.O.F.; codified as s. 943.0583, F.S.

resulting from the *arrest or filing of charges* for an offense committed or reported to have been committed while he or she was a victim of human trafficking.<sup>18</sup>

Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record and not face perjury charges or otherwise be liable for giving a false statement for failing to acknowledge an expunged criminal record unless they are a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution.<sup>19</sup> However, persons are required to acknowledge such arrests when applying for future sealing or expunctions under ss. 943.059, 943.0585, or 943.0583, F.S.<sup>20</sup>

Section 943.0583, F.S., provides a public records exemption for criminal history records of a victim of human trafficking that have been ordered expunged. Such records are retained by FDLE, but are confidential and exempt from public records requirements and can only be made available to criminal justice agencies for their respective criminal justice purposes. A criminal justice agency may retain a notation indicating compliance with an order to expunge. This exemption repeals on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

### **Effect of the Bill**

The bill, which is linked to the passage of HB 465, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements 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 proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S.; 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 proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S.

The bill also amends s. 943.0583, F.S., providing that the above-described criminal intelligence and criminal investigative information related to victims of human trafficking that is made confidential and exempt from public records requirements in s. 119.071(2)(h), F.S., is also made confidential and exempt from public records requirements under the section providing expunction for human trafficking victims.

The bill authorizes release of the confidential and exempt information by a law enforcement agency:

- In the furtherance of its official duties and responsibilities.
- 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 provides for retroactive application of the public records exemptions.<sup>21</sup>

The bill provides for repeal of the exemptions on October 2, 2020, unless both exemptions are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.<sup>22</sup>

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

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<sup>18</sup> Chapter 2014-160, L.O.F.

<sup>19</sup> Section 943.0583, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 2001).

<sup>22</sup> Article 1, Sec. 24(c), FLA. CONST.

Section 2. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 3. Provides a public necessity statement.

Section 4. Provides an effective date that is the same as that of HB 465 or similar legislation, if such legislation is passed during the same session and becomes law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state government revenues.

#### **2. Expenditures:**

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

See Fiscal Comments.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill could create a minimal fiscal impact on law enforcement agencies because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, law enforcement agencies could incur costs associated with redacting the confidential and exempt criminal intelligence information or criminal investigative information prior to releasing a record. These 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:**

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 or expanded public record or public meeting exemption. The bill expands a 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. The bill expands a public record exemption; thus, 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 expands a public record exemption limited to expunged criminal records of victims of human trafficking. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.