HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 475 Public Records/Identity of a Witness to a Felony
SPONSOR(S): Criminal Justice Subcommittee; Narain and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Clark	White
2) Government Operations Subcommittee		Williamson	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law, in part, provides public records exemptions for information identifying certain parties involved in the investigation of a crime. Such parties include confidential informants or confidential sources, a victim of a child abuse offense, and a victim of any sexual offense. Currently, there is no public records exemption for the identity of a witness to a felony.

The bill creates a public records exemption for the personal identifying information of a witness to a felony. The information is confidential and exempt for two years after the date on which the felony is observed by the witness. The bill authorizes the release of the confidential and exempt information only to a criminal justice agency or governmental entity for use in the performance of official duties.

The bill repeals the exemption on October 2, 2021, 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 may have a minimal fiscal impact on the state and local governments. *See* Fiscal Comments section.

The bill provides an effective date of July 1, 2016.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption for personal identifying information of a witness to a felony; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Florida Constitution

Article I, s. 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.

The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.[1]

Florida Statutes

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act[2] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[3] However, the exemption 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; or
- Protect trade or business secrets.[4]

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[5]

Public Record Exemption for Certain Investigation Information

Currently, s. 119.071(2), F.S., in relevant part, provides public records exemptions for various types of personal information of specified parties involved in the investigation of a crime. Information exempt from public records requirements includes information revealing the identity of a confidential informant or a confidential source,[6] information revealing the identity of a victim of a child abuse offense,[7] and information revealing the identity of a victim of any sexual offense.[8]

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[1] FLA. CONST. art. I, s. 24(c).
[2] s. 119.15, F.S.
[3] s. 119.15(6)(b), F.S.
[4] *Id.*
[5] s. 119.15(3), F.S.
[6] s. 119.071(2)(f)., F.S.
[7] s. 119.071(2)(h)1.a., F.S.
[8] s. 119.071(2)(h)1.b., F.S.

Witness to a Crime

News articles have recently reported on several homicides that occurred in 2015 in the Tampa area that remain unsolved.[9] The victim of one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.[10] A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015 Mr. Harris was the witness to multiple crimes that resulted in arrests.[11] Mr. Harris's family has made statements indicating they believe he was murdered as a result of talking to police.[12] Detectives within the Hillsborough County area have been quoted in the media as stating witnesses to crimes refuse to come forward, often out of fear of retaliation and for their safety.[13]

Currently, there is no public record exemption for the personal identifying information of a witness to a crime.

Effect of the Bill

The bill creates s. 119.071(2)(m), F.S., to provide that personal identifying information of a witness to a felony is confidential and exempt[14] from s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution for two years after the date on which the felony is observed by the witness. The confidential and exempt information may be disclosed only to a criminal justice agency or governmental entity for use in the performance of official duties.

The public necessity statement specifies that the Legislature finds that personal identifying information of a witness to a felony should be made confidential and exempt to encourage "[c]omplete cooperation and truthful testimony of witnesses" because "[t]he judicial system cannot function without the participation of witnesses."

The bill repeals the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.[15]

B. SECTION DIRECTORY:

Section 1. Creates s. 119.071(2)(m), F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of July 1, 2016.

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[9] Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, (Oct. 29, 2012), http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784 (last visited Jan. 14, 2016); Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*, TAMPA BAY TIMES, (June 2, 2015), http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047 (last visited Jan. 14, 2016).

[10] Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, (June 2, 2015), http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/ (last visited Jan. 14, 2016).

[11] *Id*.

[12] *Id*.

[13] Keith Morelli, *Tampa lawmaker's bill would keep felony witnesses secret*, TAMPA TRIBUNE, (Nov. 2, 2015), http://www.tbo.com/news/breaking-news/tampa-lawmakers-bill-would-keep-felony-witnesses-secret-20151102/ (last visited Jan. 15, 2016).

[14] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att'y Gen. (1985).

[15] FLA. CONST. art. I, s. 24(c).

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 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 have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemption. In addition, agencies could incur costs associated with redacting the confidential and 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:

   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:

   <u>Vote Requirement</u>
   Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it requires a two-thirds vote for final passage.

   <u>Public Necessity Statement</u>
   Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it includes a public necessity statement.

   <u>Breadth of Exemption</u>
   Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption that 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:

Other Comments: Discovery
An exemption from public records requirements does not render a document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure or in administrative proceedings.[16]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing the provision providing that the exemption applies to each witness until the conclusion of the prosecution of the felony or expiration of the statute of limitations period for the felony and by adding a provision that provides the exemption applies for a period of two years after the date on which the felony is observed by the witness. In addition, the committee substitute clarifies that the personal identifying information may be disclosed only to a criminal justice agency or governmental entity for use in the performance of official duties.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

[16] *See Dep't. of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069 (Fla. 3d DCA 1984) ("Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope."); *B.B. v. Dep't. of Children and Family Servs.*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that the statutory exemption for active criminal investigative information did not "override the discovery authorized by the Rules of Juvenile Procedure.").