



Criminal Justice Subcommittee

Wednesday, February 8, 2017

9:00 AM – 11:00 AM

404 HOB

Meeting Packet

Richard Corcoran
Speaker

Ross Spano
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Wednesday, February 08, 2017 09:00 am
End Date and Time: Wednesday, February 08, 2017 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following proposed committee substitute(s):

PCS for HB 39 -- Autism Awareness Training for Law Enforcement Officers
PCS for HB 107 -- Disturbing the Contents of a Grave or Tomb
PCS for HB 111 -- Public Records/Identity of Witness to a Murder
PCS for HB 165 -- Sexually Transmissible Diseases

NOTICE FINALIZED on 02/01/2017 2:37PM by Gilliam.Ann

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 39 Autism Awareness Training for Law Enforcement Officers
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:** SB 154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Brummett	WB White TW

SUMMARY ANALYSIS

Autism Spectrum Disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The Centers for Disease Control and Prevention states that approximately one in 68 children have been identified with ASD. Individuals with ASD are estimated to have up to seven times more contacts with law enforcement agencies during their lifetimes than others.

Currently, the topic of ASD is addressed in two sections of the *basic* recruit curriculum developed by the Criminal Justice Standards and Training Commission (CJSTC) which is completed by individuals seeking law enforcement officer certification. The CJSTC does not currently offer specific *post-basic* training on ASD which may be completed as part of an officer's requirement for at least 40 hours of continued employment training (CET) every four years; however, the Florida Department of Law Enforcement (FDLE) is developing a CET course that will address the symptoms of ASD and how to respond to individuals who exhibit such symptoms. The course will be available in Spring 2017.

The proposed committee substitute (PCS) creates s. 943.1727, F.S., to require FDLE to establish a CET component relating to ASD. The training must include, but is not limited to, instruction on the recognition of the symptoms and idiosyncrasies of an individual on the autism disorder spectrum and appropriate responses to such individuals. Completion of the training may count toward a law enforcement officer's required 40 hours of CET under s. 943.135, F.S.

It appears that any fiscal impact of the bill is absorbable by existing agency resources as FDLE is currently developing a CET course that will address ASD.

This PCS takes effect October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Autism Spectrum Disorder

Autism Spectrum Disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication.¹ The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD when the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) was published.²

Current Florida law provides the following definitions of terms relating to autism:

- "Autism" is defined as a "pervasive, neurologically based developmentally based disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and non-verbal communication and imaginative ability, and markedly restrictive repertoire of activities and interests."³
- "Developmental disability" is defined as "a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."⁴
- "Autism spectrum disorder" is defined as "any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: 1. Autistic disorder. 2. Asperger's syndrome. 3. Pervasive developmental disorder not otherwise specified."⁵

The latest analysis from the Centers for Disease Control and Prevention estimates that approximately one in 68 children have been identified with ASD.⁶ This estimate is based on surveys of eight-year-old children living in 11 communities in the United States in 2012.⁷ According to this data, boys are almost 5 times more likely than girls to be identified with ASD and white children are more likely to be identified than black or Hispanic children.⁸

Law Enforcement and ASD

Individuals with ASD are estimated to have up to seven times more contacts with law enforcement agencies during their lifetimes than other individuals. Yet, only 20 percent of patrol responses related to autistic individuals are for criminal activity.⁹ Instead, reports regarding autistic individuals are often

¹ CENTER FOR DISEASE CONTROL & PREVENTION, *Facts about ASD*, <http://www.cdc.gov/nbcddd/autism/facts.html> (last visited Jan. 26, 2017).

² NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE, *Autism Spectrum Disorder Fact Sheet*, <https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Fact-Sheets/Autism-Spectrum-Disorder-Fact-Sheet> (last visited Jan. 26, 2017).

³ s. 393.063(5), F.S.

⁴ s. 393.063(12), F.S.

⁵ ss. 627.6686(2)(b), F.S. and 641.31098(2)(b), F.S.

⁶ CENTERS FOR DISEASE CONTROL & PREVENTION, *Data and Statistics*, <https://www.cdc.gov/nbcddd/autism/data.html> (last visited Jan. 26, 2017).

⁷ CENTERS FOR DISEASE CONTROL & PREVENTION, *10 Things You Need to Know about CDC's Latest Report from The Autism and Developmental Disabilities Monitoring Network*, <http://www.cdc.gov/features/dsautismdata/index.html> (last visited Jan. 26, 2017).

⁸ *Id.*

⁹ Pamela Kulbarsh, *Law Enforcement and Autism*, OFFICER.COM (Feb. 15, 2013), <http://www.officer.com/article/10880086/law-enforcement-and-autism> (last visited Jan. 26, 2017).

made by individuals who are observing a domestic disturbance or suspicious person acting in an unusual manner or requesting assistance with a medical emergency.¹⁰

Law Enforcement Training on Autism Spectrum Disorder

Basic Training

The current Florida Law Enforcement Academy basic recruit curriculum includes the topic of ASD in two sections:

- 1) Chapter 3 (Interactions in a Diverse Community- 40 classroom hours), Unit 2 (Communicating in a Diverse Society), Lesson 3 (Developmental Disabilities); and
- 2) Chapter 6 (Calls for Service- 36 classroom hours), Unit 6 (Responding to a Person in Crisis), Lesson 2 (Intervention and Referral).¹¹

Instructors for the courses described above are provided with resources such as videos and links to informational websites to aid classroom instruction. A guide is provided to all instructors that, along with required activities, includes suggested activities such as: reviewing websites related to autism, reviewing case law, and inviting a guest speaker from the Autism Society or a member of the Exceptional Student Education Program.¹²

Post-Basic Training

Currently, as a condition of continued employment or appointment, s. 943.135, F.S., requires law enforcement officers to receive at least 40 hours of continued employment training (CET) every four years. The employing agency must document that the CET is job-related and consistent with the needs of the employing agency, and report training completion to the Criminal Justice Standards and Training Commission (CJSTC).¹³

The CJSTC does not currently offer specific post-basic training on ASD. Agencies wishing to offer training to their officers rely on CJSTC-certified training schools or vendors to provide training on the topic. Training schools may use CJSTC Trust Fund Monies to deliver the training. The training topic is provided in the Crisis Intervention Team (CIT) training program (the Memphis Model) that is independently offered through training facilitated by the Florida Sheriffs Association through June 2018.¹⁴

The Criminal Justice Professionalism Division within the Florida Department of Law Enforcement (FDLE) is currently developing a CET course that will address the symptoms of ASD and how to respond to individuals who exhibit such symptoms. The course will be available to all Florida law enforcement officers in the Spring of 2017. Completion of the training may count toward an officer's mandatory CET requirement.¹⁵

Effect of the Bill

The bill creates s. 943.1727, F.S., to require FDLE to establish a CET component relating to ASD as defined in s. 627.6866, F.S. The training must include, but is not limited to, instruction on the recognition of the symptoms and idiosyncrasies of an individual on the autism disorder spectrum and appropriate responses to such individuals. Completion of the training component may count toward a law enforcement officer's required 40 hours of instruction for CET under s. 943.135, F.S.

The bill takes effect October 1, 2017.

¹⁰ *Id.*

¹¹ Florida Department of Law Enforcement, Agency Bill Analysis for HB 39 (2017) (on file with the Criminal Justice Subcommittee).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

B. SECTION DIRECTORY:

Section 1: Creates s. 943.1727, F.S., requiring FDLE to establish a continued employment training component relating to ASD.

Section 2: Provides an effective date of October 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have any impact on state revenues.
2. Expenditures: The bill requires FDLE to develop continued employment training relating to ASD. The Criminal Justice Professionalism Division within FDLE is currently developing a course that will address this topic. Thus, it appears that any fiscal impact of the bill is absorbable by existing agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill does not appear to have any impact on local government revenues.
2. Expenditures: This bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.
2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to autism awareness training for law
 3 enforcement officers; creating s. 943.1727, F.S.;
 4 requiring the Department of Law Enforcement to
 5 establish a continued employment training component
 6 relating to autism spectrum disorder; providing a
 7 definition; specifying instruction to be included in
 8 the training component; providing that completion of
 9 the training may count toward continued employment
 10 instruction requirements; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 943.1727, Florida Statutes, is created
 15 to read:

16 943.1727 Continued employment training relating to autism
 17 spectrum disorder.—The department shall establish a continued
 18 employment training component relating to autism spectrum
 19 disorder as defined in s. 627.6686. The training component shall
 20 include, but need not be limited to, instruction on the
 21 recognition of the symptoms and idiosyncrasies of an individual
 22 on the autism disorder spectrum and appropriate responses to an
 23 individual exhibiting such symptoms and idiosyncrasies.
 24 Completion of the training component may count toward the 40
 25 hours of instruction for continued employment or appointment as

PCS for HB 39

ORIGINAL

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26 a law enforcement officer required under s. 943.135.

27 Section 2. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 107 Disturbing the Contents of a Grave or Tomb
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Criminal Justice Subcommittee, Merlin, White

SUMMARY ANALYSIS

Currently, s. 872.02, F.S., provides that it is a third degree felony to willfully and knowingly damage or remove a tomb, monument, or other specified structure and a second degree felony to willfully and knowingly disturb the contents of a tomb. These offenses, however, do not apply to a:

- Person acting under the direction of the Division of Historical Resources of the Department of State;
• Cemetery regulated by the Department of Financial Services (DFS) under ch. 497, F.S.; or
• Person otherwise authorized by law to disturb a tomb, monument, or other specified structure.

On occasion, a cemetery may seek to remove or relocate the contents of a tomb for a legitimate purpose such as maintenance, expansion, or modernization. Currently, a cemetery regulated by DFS may remove or relocate the contents of a tomb only after receiving written authorization from a legally authorized representative of the decedent or a court. For cemeteries that are exempt from DFS regulation, there are no statutorily-specified requirements for the removal or relocation of the contents of a tomb.

Theoretically, an exempt cemetery that relocates the contents of a tomb could be in violation of the criminal offenses specified in s. 872.02, F.S.; however, in a recent case involving the relocation of a tomb by an exempt cemetery, which was not authorized by a representative of the decedent or the court, law enforcement authorities declined to prosecute due to a belief that the criminal offenses apply only to someone entering a cemetery without permission to commit a criminal act.

To address this issue, the proposed committee substitute (PCS) amends s. 872.02, F.S., to:

- Clarify that the second degree felony offense of disturbing the contents of a tomb includes conduct such as excavation, exposure, movement, or removal of the contents of a tomb.
• Provide an exemption from the section's criminal offenses for an exempt cemetery that:
o Conducts ordinary maintenance that does not relocate the tomb;
o Obtains written authorization for the relocation from a legally authorized person or a court;
o Relocates a tomb if the relocation is necessitated by damage from a natural disaster; or
o Publishes a notice of the relocation of tomb that is more than 75 years old in a newspaper in the relevant county and does not receive an objection or, if an objection is received, is granted approval for the relocation by the local governing body.

The Criminal Justice Impact Conference has not yet met to determine the impact of this PCS. The PCS may increase the need for prison beds to the extent that it clarifies the type of conduct that results in commission of the second degree felony offense of disturbing the contents of a tomb. The PCS may also have a fiscal impact on local government entities for hearings required by the PCS in specified circumstances and on exempt cemeteries that publish notice in newspapers for certain tomb relocations. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," infra.

The PCS provides an effective date of October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Offenses Concerning Dead Bodies and Graves under Chapter 872, F.S.

In Florida, criminal offenses concerning dead bodies and graves are governed by Chapter 872, F.S.¹ Within that chapter are a number of statutory prohibitions and limitations.² In part relevant to this bill, s. 872.02(1) and (2), F.S., make it a:

- Third degree felony³ for a person to willfully and knowingly destroy, mutilate, deface, injure, or remove any:
 - Tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead; or
 - Fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or structure or thing placed or designed for a memorial of the dead or for any enclosure for the burial of the dead.
- Third degree felony for a person to willfully destroy, mutilate, remove, cut, break, or injure any tree, shrub, or plant placed or being within any enclosure for the burial of the dead.
- Second degree felony⁴ to willfully and knowingly disturb the contents of a tomb or grave.⁵

The section provides that a "tomb" includes any mausoleum, columbarium, or belowground crypt."⁶

Finally, the section specifies that the offenses described above do not apply to:

- Any person acting under the direction or authority of the Division of Historical Resources of the Department of State;⁷
- Cemeteries operating under ch. 497, F.S.; or
- Any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents."^{8, 9}

¹ Ch. 872, F.S. is entitled, "Offenses Concerning Dead Bodies and Graves."

² This includes selling or trafficking in dead bodies; injuring or removing a tomb or monument; disturbing the contents of a grave or tomb; cremating human bodies less than 48 hours after death; performing autopsies without consent; discovering human remains; and abusing dead bodies. *See* ss. 872.01-872.06, F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁴ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁵ Violations of s. 872.02, F.S., are not frequently charged. According to data from the Florida Department of Law Enforcement, there were 158 arrests for a violation of s. 872.02, F.S., during the 11-year period between 2006 and 2016, i.e., less than an average of 15 arrests per year. Email from Ronald Draa, Director of External Affairs, Florida Department of Law Enforcement (January 17, 2017) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

⁶ s. 872.02(4), F.S.

⁷ The powers and duties of the Division of Historical Resources of the Department of State are set forth in s. 267.031, F.S. Subject to some limitations, a State Archaeologist, as employed by the Division, may assume jurisdiction over an unmarked human burial site in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts. *See* ss. 872.05(4), (5), and (6), F.S.

⁸ s. 872.02(3), F.S.

⁹ Few appellate cases in Florida reference s. 872.02, F.S. Only one case has discussed the interpretation of s. 872.02, F.S., and that case involved interpretation of language that has since been amended. *See Newman v. State*, 174 So. 2d 479 (Fla. 2d DCA 1965) (reversing a conviction for wantonly and maliciously disturbing the contents of a tomb or grave under a prior version of s. 872.02, F.S., where there was no evidence that the grave was on Native American land; the grave was open without any fencing or warning; the skull found by the defendant was not attached to the body; the defendant never made any attempt to conceal the fact that he took the skull; and defendant testified that he did not intend to commit a moral wrong).

Cemetery Regulation under Chapter 497, F.S.

As referenced above, one of the statutory exceptions to the criminal offenses established in s. 872.02, F.S., is for "cemeteries operating under ch. 497." Chapter 497, F.S., is entitled the Florida Funeral, Cemetery, and Consumer Services Act ("the Act").¹⁰ The Act authorizes the Board of Funeral, Cemetery, and Consumer Services ("the Board") within the Department of Financial Services (DFS) to regulate cemeteries,¹¹ columbaria,¹² cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.¹³

The Act specifically exempts, however, certain types of cemeteries from its regulations. To be exempt, a cemetery must be a:

- Religious institution cemetery of less than five acres which provide only single-level ground burial;
- County or municipal cemetery;
- Community and nonprofit association cemetery that provides only single-level ground burial and not sell burial spaces or burial merchandise;
- Cemetery owned and operated or dedicated by a religious institution before June 23, 1976;
- Cemetery beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- Columbarium consisting of less than one-half acre contiguous to and owned by an existing religious institution subject to local government zoning;
- Family cemetery of less than two acres not selling burial spaces or merchandise;
- A mausoleum of two acres or less contiguous to and owned by a religious institution subject to local government zoning, incorporated at least 25 years and possessing sufficient funds in an endowment fund to construct the mausoleum; or
- Columbarium consisting of five acres or less which is located on the main campus of a state university.^{14,15}

Cemeteries Seeking to Remove or Relocate a Tomb or Grave

On occasion, a cemetery may seek to remove or relocate the contents of a tomb or grave for a legitimate purpose such as maintenance, expansion, or modernization. Currently, a cemetery operating under ch. 497, F.S., may disinter or reinter human remains only after receiving written authorization from a legally authorized representative¹⁶ or written authorization from a court of competent jurisdiction. Failure to comply with such requirements subjects the cemetery to discipline by the Board.¹⁷

¹⁰ s. 497.001, F.S.

¹¹ Section 497.005(11), F.S., defines a "cemetery" as comprising one of the following: "land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places."

¹² Section 497.005(16), F.S., defines a "columbarium" as "a structure or building that is substantially above the ground and that is intended to be used for the inurnment of cremated remains."

¹³ s. 497.103(1) and (2), F.S.

¹⁴ s. 497.260(1), F.S.

¹⁵ All cemeteries in this state, whether exempt or subject to regulation under ch. 497, F.S., must comply with the regulations specified in ss. 497.276(1), 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284, F.S. s. 497.260(2), F.S. Regulations imposed under these sections of law include requirements for the maintenance of burial records and solicitation of certain sales and prohibitions against discrimination based on race, color, creed, marital status, sex, or national origin. These regulations do not address the removal or relocation of the contents of a tomb.

¹⁶ Section 497.005(43), F.S., defines "legally authorized person" as meaning, in the priority listed: (a) the decedent, when written inter vivos authorizations and directions are provided by the decedent; (b) the person designated by the decedent as authorized to direct disposition pursuant to specified federal laws; (c) the surviving spouse, unless the spouse has been arrested for committing against the deceased an act of domestic violence as defined in s. 741.28 that resulted in or contributed to the death of the deceased; (d) a son or daughter who is 18 years of age or older; (e) a parent; (f) a brother or sister who is 18 years of age or older; (g) a grandchild who is 18 years of age or older; (h) a grandparent; or (i) any person in the next degree of kinship. The term may also include, if no family member exists or is available, the guardian of the dead person at the time of death; the personal representative of the deceased; the

There are no statutorily-specified requirements for the disinterment or reinterment of human remains by a cemetery that is exempt from regulation by the Board. Accordingly, an exempt cemetery is not expressly required by law to first obtain the approval of a legally authorized representative of the decedent for such conduct. Theoretically, an exempt cemetery engaging in such conduct could be in violation of the criminal offenses specified in s. 872.02, F.S., proscribing the removal of a tomb, monument, and other specified items and proscribing the disturbance of the contents of a tomb or grave; however, based on an incident that occurred in 2013, it appears law enforcement authorities may be reluctant at times to prosecute such cases under the current language of s. 872.02, F.S.¹⁸

In December 2013, a complaint was filed with DFS in which it was alleged that an exempt cemetery in Casselberry, Florida relocated a grave without prior authorization from family members of the decedent. The matter was reviewed by DFS investigators and it was determined that the cemetery had moved the grave approximately three feet away from its former location.¹⁹ The cemetery owner admitted moving and lowering grave because it was necessary for the cemetery's redevelopment plan and would reduce the risk of damage to the exposed grave vault by vandals or storms. The family, who was upset by the relocation, reported the matter to local law enforcement and DFS, but neither agency believed action could be taken against the cemetery. DFS was without jurisdiction in the matter because the cemetery was exempt from regulation under ch. 497, F.S. Further, DFS noted that in a previous report regarding an alleged unauthorized grave relocation that law enforcement had stated that s. 872.02, F.S. "is for 'grave robbers' or someone entering onto a cemetery without permission to commit a criminal act and does not relate to this . . . scenario" involving an exempt cemetery. DFS agreed with this finding.²⁰

Effect of the Bill

The bill amends s. 872.02(1), F.S., to create definitions for the terms used in the statute. Under the bill:

- An "exempt cemetery" means a cemetery that is exempt from regulation pursuant to s. 497.260(1), F.S., i.e., a cemetery that is not subject to regulation by the Board.
- A "legally authorized person" has the same meaning as provided in s. 497.005, F.S.²¹
- A "memorial" means a structure or thing placed or designed for a memorial of the dead, including a monument or gravestone.
- An "operator" means an owner, officer, employee, or agent.
- A "tomb" includes a grave space,²² mausoleum,²³ columbarium,²⁴ or belowground crypt,²⁵ as those terms are defined in s. 497.005, F.S., and a burial mound or earthen or shell monument containing human skeletal remains or associated burial artifacts.

attorney in fact of the dead person at the time of death; the health surrogate of the dead person at the time of death; a public health officer; the medical examiner, county commission, or administrator acting under part II of chapter 406 or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as the legally authorized person.

¹⁷ See s. 497.384(3), F.S. ("The funeral director shall obtain written authorization from a legally authorized person or a court of competent jurisdiction prior to the disinterment and reinterment of a dead human body."); see also s. 497.152, F.S. (imposing discipline or other enforcement action against a licensee for specified conduct which includes "[f]ailing to obtain written authorization from a legally authorized person before entombment, interment, disinterment, disinterment, or disinterment of the remains of any human being."); and Rule 69K-6.007(4)(a)-(c), F.A.C. (requiring cemeteries regulated by DFS to obtain all required permits and specified written authorization or a court order before performing a disinterment).

¹⁸ See also "Report: Casselberry Cemetery Cleared of Wrongdoing After Moving Grave," WFTV 9 (April 25, 2014), available at <http://www.wftv.com/news/local/report-casselberry-cemetery-cleared-wrongdoing-aft/106726697> (last viewed on Jan. 24, 2017).

¹⁹ Schuller, Kurt, Investigator, Florida Department of Financial Services, Report of Investigation, Case No. ATN-21993, at *2-3 (April 10, 2014) (on file with the House Subcommittee on Criminal Justice).

²⁰ *Id.*

²¹ See Footnote 16.

²² Section 497.005(40), F.S., defines a "grave space" as "a space of ground in a cemetery intended to be used for the interment in the ground of human remains."

The bill also amends:

- Section 872.02(2), F.S., to make technical changes for purposes of eliminating redundancies, using consistent terminology, and making the language clearer.
- Section 872.02(3), F.S., to clarify that the second degree felony offense of disturbing the contents of a tomb includes conduct such as excavation, exposure, movement, and removal of the contents of a tomb.

Finally, the bill adds exceptions providing that the law's criminal offenses do not apply to an operator of an exempt cemetery:

- Who is conducting ordinary maintenance if such maintenance does not relocate the memorial, tomb, or contents of a tomb to another plot or site; or
- Who relocates a memorial, tomb, or contents of a tomb to another plot or site if:
 - Before the relocation, the operator obtains written authorization for the relocation from a legally authorized person or a court order authorizing the relocation;
 - A natural disaster causes damage to the exempt cemetery which necessitates the relocation; or
 - More than 75 years have elapsed since the interment, entombment, or inurnment²⁶ at the exempt cemetery and the operator of the exempt cemetery publishes a public notice, once a week for 4 consecutive weeks, in a newspaper of general circulation within the county in which the exempt cemetery is located.

The bill specifies that the public notice must include the:

- Name of the exempt cemetery;
- Name, address, and telephone number of the cemetery representative with whom written objections may be filed;
- Reason and necessity for the relocation;
- Name of the deceased person interred, entombed, or inurned;
- Date of initial interment, entombment, or inurnment;
- Proposed site of relocation; and
- Proposed date of relocation, which may not be less than 30 days from the last date of publication.

If a written objection to the relocation is not received from a legally authorized person within 30 days after the last date of publication of the notice, the exempt cemetery may proceed with the relocation.

If such objection is received, a public hearing shall be held before the city council if the exempt cemetery is located in a municipality or before the applicable county commission if the exempt cemetery is not located within a municipality. At the hearing, interested parties must have an opportunity to be heard and introduce testimony. The council or commission must determine whether to grant or deny the request for the relocation. If granted, the exempt cemetery may proceed with the relocation.

The bill takes effect on October 1, 2017.

²³ Section 497.005(46), F.S., defines a "mausoleum" as "a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains."

²⁴ See Footnote 12.

²⁵ Section 497.005(4), F.S., defines "belowground crypts" as "interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as 'lawn crypts,' 'westminsters,' or 'turf-top crypts.'"

²⁶ The word "inurn" means "1. Entomb; 2. To place (as cremated remains) in an urn." The noun form of "inurn" is "inurnment." See <https://www.merriam-webster.com/dictionary/inurn> (last viewed Jan. 30, 2017).

B. SECTION DIRECTORY:

Section 1. Amends s. 872.02, F.S., relating to injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties; exceptions.

Section 2. Provides an effective date of October 1, 2017.

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:

The Criminal Justice Impact Conference has not yet met to determine the impact of this bill. It is anticipated that the bill may increase the need for prison beds to the extent that it clarifies the type of conduct that results in commission of the second degree felony offense of disturbing the contents of a tomb. Such potential increase, however, may be offset by the exceptions created by the bill for the relocation of tombs by exempt cemeteries that comply with the bill's requirements for such relocations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

A city council or county commission could incur expenses to hold hearings regarding relocations unless the council or commission assesses fees from the parties for such expenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There will be a fiscal impact to the operator of a cemetery who chooses to publish notice regarding a proposed relocation in a newspaper of general circulation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law. Additionally, it is anticipated that any fiscal impact of the bill on a municipality or county as a result of the bill's requirement for a hearing in specified circumstances would be insignificant.

2. Other:

None.

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

N/A

1 A bill to be entitled
 2 An act relating to criminal offenses involving tombs
 3 and memorials; amending s. 872.02, F.S.; creating and
 4 revising definitions; making technical changes;
 5 prohibiting the excavation, exposition, movement,
 6 removal, or other disturbance of the contents of a
 7 tomb or memorial; providing criminal penalties;
 8 providing exceptions to the prohibition against
 9 disturbance of the contents of a tomb or memorial for
 10 ceteries exempted from certain regulation; providing
 11 an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 872.02, Florida Statutes, is amended to
 16 read:

17 872.02 Injuring or removing tomb or memorial ~~monument~~;
 18 disturbing contents of ~~grave or tomb~~; penalties; exceptions.-

19 (1) For purposes of this section, the term:

20 (a) "Exempt cemetery" means a cemetery that is exempt from
 21 regulation pursuant to s. 497.260(1).

22 (b) "Legally authorized person" has the same meaning
 23 provided in s. 497.005.

24 (c) "Memorial" means a structure or thing placed or
 25 designed for a memorial of the dead. The term includes a

26 monument or gravestone.

27 (d) "Operator" means an owner, officer, employee, or agent.

28 (e) "Tomb" includes a grave space, mausoleum, columbarium,
 29 or belowground crypt, as those terms are defined in s. 497.005,
 30 and also includes a burial mound or an earthen or shell monument
 31 containing human skeletal remains or associated burial
 32 artifacts.

33 (2) A person commits a felony of the third degree,
 34 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 35 if the person ~~who~~ willfully and knowingly:

36 (a) Destroys, mutilates, defaces, injures, or removes:

37 1. A any tomb or memorial; ~~monument, gravestone, burial~~
 38 ~~mound, earthen or shell monument containing human skeletal~~
 39 ~~remains or associated burial artifacts, or other structure or~~
 40 ~~thing placed or designed for a memorial of the dead, or~~

41 2. A any fence, railing, curb, or other thing intended
 42 for:

43 a. The protection or ornamentation of a any tomb or
 44 ~~memorial;~~ ~~monument, gravestone, burial mound, earthen or shell~~
 45 ~~monument containing human skeletal remains or associated burial~~
 46 ~~artifacts, or other structure before mentioned, or~~

47 b. An ~~for any enclosure for the burial of the dead,~~ ~~or~~
 48 willfully

49 (b) Destroys, mutilates, removes, cuts, breaks, or injures
 50 a any tree, shrub, or plant placed or ~~being~~ within an any such

51 enclosure for the burial of the dead, ~~commits a felony of the~~
 52 ~~third degree, punishable as provided in s. 775.082, s. 775.083,~~
 53 ~~or s. 775.084.~~

54 (3)(2) A person who willfully and knowingly excavates,
 55 exposes, moves, removes, or otherwise disturbs the contents of a
 56 tomb ~~or grave~~ commits a felony of the second degree, punishable
 57 as provided in s. 775.082, s. 775.083, or s. 775.084.

58 (4)(3) This section shall not apply to:

59 (a) A ~~any~~ person acting under the direction or authority of
 60 the Division of Historical Resources of the Department of State,
 61 to cemeteries operating under chapter 497, or to a ~~any~~ person
 62 otherwise authorized by law to commit an act ~~remove or disturb a~~
 63 ~~tomb, monument, gravestone, burial mound, or similar structure,~~
 64 ~~or its contents,~~ as described in subsection (2)(1) ~~or subsection~~
 65 (3).

66 (b) An operator of an exempt cemetery who is conducting
 67 ordinary maintenance, if such maintenance does not relocate a
 68 memorial, tomb, or the contents of a tomb to another plot or
 69 site.

70 (c) An operator of an exempt cemetery who relocates a
 71 memorial, a tomb, or the contents of a tomb to another plot or
 72 site if:

73 1. Before the relocation, the operator obtains written
 74 authorization for the relocation from a legally authorized
 75 person or a court order authorizing the relocation;

76 2. A natural disaster causes damage to the exempt
 77 cemetery which necessitates the relocation; or

78 3. More than 75 years have elapsed since the interment,
 79 entombment, or inurnment at the exempt cemetery and the operator
 80 of the exempt cemetery publishes a public notice, once a week
 81 for 4 consecutive weeks, in a newspaper of general circulation
 82 within the county in which the exempt cemetery is located.

83 a. The public notice must contain the name of the exempt
 84 cemetery; the name, address, and telephone number of the
 85 representative of the exempt cemetery with whom written
 86 objections may be filed; the reason and necessity for the
 87 relocation; the name of the deceased person interred, entombed,
 88 or inurned; the date of initial interment, entombment, or
 89 inurnment; the proposed site of relocation; and the proposed
 90 date of relocation. The proposed date of relocation may not be
 91 less than 30 days from the last date of publication.

92 b. If a written objection to the relocation:

93 (I) Is not received from a legally authorized person
 94 within 30 days after the last date of publication of the public
 95 notice, the exempt cemetery may proceed with the relocation.

96 (II) Is received from a legally authorized person, a
 97 public hearing shall be held before the city council if the
 98 exempt cemetery is located in a municipality or before the
 99 applicable county commission if the exempt cemetery is not
 100 located within a municipality. Interested parties shall have the

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101 opportunity to be heard at the hearing in person or by counsel
 102 and to introduce testimony. The council or commission shall
 103 determine whether to grant or deny the request for the
 104 relocation. If granted, the exempt cemetery may proceed with the
 105 relocation.

106 ~~(4) For purposes of this section, the term "tomb" includes~~
 107 ~~any mausoleum, columbarium, or belowground crypt.~~

108 Section 2. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 111 Public Records/Identity of Witness to a Murder
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		White	White

SUMMARY ANALYSIS

Current law 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, a victim of a human trafficking offense who is less than 18 years of age, and a victim of a sexual offense.

The bill creates a public records exemption for criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder. The information is confidential and exempt for two years after the date on which the murder is observed by the witness. The bill authorizes a criminal justice agency to disclose the confidential and exempt information:

- In the furtherance of its official duties and responsibilities.
- To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- To another governmental agency for use in the performance of its official duties and responsibilities.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill also provides that the public records exemption continues to apply to personal identifying information of a witness to a murder when it is disclosed in discovery to a person who is arrested or made part of a court file.

The bill 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. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

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 murder; 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 Act² 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 Records Exemptions for Certain Investigation Information

Currently, s. 119.071(2), F.S., in relevant part, provides public records exemptions for various types of criminal investigative⁶ or intelligence information⁷ that reveals the identifying information of specified parties involved in the investigation of a crime. Information revealing the identity of:

- A confidential informant or a confidential source is exempt from disclosure.⁸

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 Section 119.071(1)(b), F.S., defines "criminal investigative information" as "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."

⁷ Section 119.071(1)(a), F.S., defines "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 possible criminal activity."

- A victim under the age of 18 of a human trafficking or child abuse offense is confidential and exempt from disclosure.⁹
- A victim of a sexual offense is confidential and exempt from disclosure.¹⁰

It should be noted that 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 by the custodian of the record when determined appropriate by the custodian.¹¹ If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of the record to anyone other than the persons or entities specifically designated in statute.¹²

The identifying information of the above-described crime victims remains confidential and exempt from public disclosure even when:

- Such information is provided in discovery to a person who has been arrested.¹³ An exemption from public record requirements does not render a record privileged for purposes of criminal discovery.¹⁴
- Made part of the court record.¹⁵

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 such release would assist in locating or identifying a person that the LEA believes to be missing or endangered. The information must be limited to that needed to identify or locate the victim and may not include the sexual nature of the offense committed against the person.
- To another governmental agency in the furtherance of its official duties and responsibilities.

Witness to a Crime

News articles during the past two years have reported on several unsolved homicides occurring in the Tampa area.¹⁶ The victim in one of the cases was Edward Harris, a 14-year-old boy who was murdered

⁸ s. 119.071(2)(f), F.S.

⁹ s. 119.071(2)(h)1.a., F.S.

¹⁰ s. 119.071(2)(h)1.b., F.S.

¹¹ 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).

¹² See 85-62 Fla. Op. Att’y Gen. (1985).

¹³ s. 119.011(3)(c)5., F.S.

¹⁴ See s. 119.07(8), F.S. (emphasis added) (providing that the section, which is in part entitled “exemptions” and which requires a records custodian to redact the portion of a record to which an exemption applies, does not “expand or **limit** the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings.”); *Ramses, Inc. v. Demings*, 29 So. 3d 418, 421-423 (Fla 5th DCA 2010) (recognizing the distinction between public records laws and criminal discovery rights and holding that unredacted videos showing undercover officers faces were still subject to public record exemptions even though the unredacted videos were released to the defendants in discovery under Fla. R. Crim. P. 3.220); *B.B. v. Dep’t. of Children and Family Servs.*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that a mother had a right to records “in her capacity as a party to the child dependency proceeding,” not as a “citizen” and that the statutory exemption for active criminal investigative information did not “override the discovery authorized by the Rules of Juvenile Procedure.”); and *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.”).

¹⁵ s. 119.0714(1)(h), F.S.

¹⁶ Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, (Oct. 29, 2015), <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited Jan. 16, 2017); 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. 16, 2017); Dan Sullivan, *In Tampa, a father and a city still seek answers a year after boy’s slaying*, TAMPA BAY TIMES, (May 31, 2016), <http://www.tampabay.com/news/publicsafety/tampa-father-still-seeking-answers-a-year-after-boys-slaying/2279651> (last visited Jan. 16, 2017).

in a park during a drive-by-shooting.¹⁷ 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. Mr. Harris's family has made statements indicating they believe he was murdered as a result of talking to police.¹⁸

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 criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S.,¹⁹ is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, for two years after the date on which the murder is observed by the witness.

The bill authorizes a criminal justice agency²⁰ to disclose such information:

- In the furtherance of its official duties and responsibilities.
- To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- To another governmental agency for use in the performance of its official duties and responsibilities.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill also adds a cross-reference to the exemption for the personal identifying information of a witness to a murder in:

- Section 119.011(3)(c)5., F.S., to specify that such information remains confidential and exempt from public disclosure when the information is provided in discovery to a person who is arrested.
- Section 119.0714(1)(h), F.S., to specify that such information remains confidential and exempt from public disclosure when made part of the court record.²¹

The bill provides a statement of public necessity as required by the Florida Constitution.²² It specifies that the Legislature finds that personal identifying information of a witness to a murder 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 takes effect on July 1, 2017.

B. SECTION DIRECTORY:

¹⁷ 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. 16, 2017).

¹⁸ *Id.*

¹⁹ Section 782.04, F.S., relating to murder, makes the unlawful killing of a human being punishable as a capital felony or second or first degree felony, depending on the circumstances of the crime.

²⁰ Section 119.011(4), F.S., defines "criminal justice agency" as: "(a) Any law enforcement agency, court, or prosecutor; (b) Any other agency charged by law with criminal law enforcement duties; (c) 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 (d) The Department of Corrections."

²¹ This exemption is not made subject to the Open Government Sunset Review Act, because the Act provides that it does not apply to an exemption that applies solely to the State Court System. s. 119.15(2)(b), F.S.

²² FLA. CONST. art. I, s. 24(c).

Section 1. Amends s. 119.011, F.S., relating to definitions.

Section 2. Amend s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 3. Amends s. 119.0714, F.S., relating to court files, court records, and official records.

Section 4. Provides a public necessity statement.

Section 5. Provides an effective date of July 1, 2017.

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 by existing resources, 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 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.

Public Necessity Statement

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.

Breadth of Exemption

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 limited public records exemption for the personal identifying information of a witness to a murder, which 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

N/A

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.011, F.S.; providing that the personal identifying
 4 information of a witness to a murder remains
 5 confidential and exempt for a specified period when
 6 given to a person who is arrested; amending s.
 7 119.071, F.S.; providing an exemption from public
 8 records requirements for criminal intelligence or
 9 criminal investigative information that reveals the
 10 personal identifying information of a witness to a
 11 murder for a specified period; authorizing specified
 12 entities to receive the information; providing for
 13 future legislative review and repeal of the exemption;
 14 amending s. 119.0714, F.S.; providing that the public
 15 records exemption applies to personal identifying
 16 information of a witness to a murder that is made part
 17 of a court file; providing a statement of public
 18 necessity; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Paragraph (c) of subsection (3) of section
 23 119.011, Florida Statutes, is amended to read:
 24 119.011 Definitions.—As used in this chapter, the term:
 25 (3)

26 (c) "Criminal intelligence information" and "criminal
 27 investigative information" shall not include:

28 1. The time, date, location, and nature of a reported
 29 crime.

30 2. The name, sex, age, and address of a person arrested or
 31 of the victim of a crime except as provided in s. 119.071(2)(h).

32 3. The time, date, and location of the incident and of the
 33 arrest.

34 4. The crime charged.

35 5. Documents given or required by law or agency rule to be
 36 given to the person arrested, except as provided in s.
 37 119.071(2)(h) or (2)(m), and, except that the court in a
 38 criminal case may order that certain information required by law
 39 or agency rule to be given to the person arrested be maintained
 40 in a confidential manner and exempt from the provisions of s.
 41 119.07(1) until released at trial if it is found that the
 42 release of such information would:

43 a. Be defamatory to the good name of a victim or witness
 44 or would jeopardize the safety of such victim or witness; and

45 b. Impair the ability of a state attorney to locate or
 46 prosecute a codefendant.

47 6. Informations and indictments except as provided in s.
 48 905.26.

49 Section 2. Paragraph (m) is added to subsection (2) of
 50 section 119.071, Florida Statutes, to read:

51 119.071 General exemptions from inspection or copying of
 52 public records.-

53 (2) AGENCY INVESTIGATIONS.-

54 (m)1. Criminal intelligence information or criminal
 55 investigative information that reveals the personal identifying
 56 information of a witness to a murder, as described in s. 782.04,
 57 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 58 I of the State Constitution for 2 years after the date on which
 59 the murder is observed by the witness. A criminal justice agency
 60 may disclose such information:

61 a. In the furtherance of its official duties and
 62 responsibilities.

63 b. To assist in locating or identifying the witness if
 64 the agency believes the witness to be missing or endangered.

65 c. To another governmental agency for use in the
 66 performance of its official duties and responsibilities.

67 2. This paragraph is subject to the Open Government Sunset
 68 Review Act in accordance with s. 119.15 and shall stand repealed
 69 on October 2, 2022, unless reviewed and saved from repeal
 70 through reenactment by the Legislature.

71 Section 3. Paragraph (h) of subsection (1) of section
 72 119.0714, Florida Statutes, is amended to read:

73 119.0714 Court files; court records; official records.-

74 (1) COURT FILES.-Nothing in this chapter shall be
 75 construed to exempt from s. 119.07(1) a public record that was

76 made a part of a court file and that is not specifically closed
 77 by order of court, except:

78 (h) Criminal intelligence information or criminal
 79 investigative information that is confidential and exempt as
 80 provided in s. 119.071(2)(h) or (2)(m).

81 Section 4. The Legislature finds that it is a public
 82 necessity that personal identifying information of a witness to
 83 a murder, as described in s. 782.04, Florida Statutes, be made
 84 confidential and exempt from s. 119.07(1), Florida Statutes, and
 85 s. 24(a), Article I of the State Constitution for 2 years after
 86 the date on which the murder is observed by the witness. The
 87 judicial system cannot function without the participation of
 88 witnesses. Complete cooperation and truthful testimony of
 89 witnesses is essential to the determination of the facts of a
 90 case. The public disclosure of personal identifying information
 91 of a witness to a murder could have an undesirable chilling
 92 effect on witnesses stepping forward and providing their
 93 eyewitness accounts of murders. A witness to a murder may be
 94 unwilling to cooperate fully with law enforcement officers if
 95 the witness knows his or her personal identifying information
 96 can be made publicly available. A witness may be less likely to
 97 call a law enforcement officer and report a murder if his or her
 98 personal identifying information is made available in connection
 99 with the murder that is being reported or under investigation.
 100 The Legislature further finds that a witness could become the

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101 subject of intimidation tactics or threats by the perpetrator of
 102 the murder if the witness's personal identifying information is
 103 publicly available. For these reasons, the Legislature finds
 104 that it is a public necessity that the personal identifying
 105 information of a witness to a murder, as described in s. 782.04,
 106 Florida Statutes, be made confidential and exempt from public
 107 record requirements.

108 Section 5. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 165 Sexually Transmissible Diseases
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Brummett WB	White KW

SUMMARY ANALYSIS

Section 384.24, F.S., prohibits a person from having "sexual intercourse" if the person:

- Knows he or she is infected with one or more specified sexually transmissible diseases (STDs);
- Has been informed that the STD is transmissible to another person through sexual intercourse; and
- Has not first informed the other person of the presence of the STD and gained the person's consent to the sexual intercourse.

The specified STDs are: (1) chancroid; (2) gonorrhea; (3) granuloma inguinale; (4) lymphogranuloma venereum; (5) genital herpes simplex; (6) chlamydia; (7) nongonococcal urethritis (NGU); (8) pelvic inflammatory disease (PID)/acute salpingitis; (9) syphilis; and (10) human immunodeficiency virus (HIV) infection.

A violation of the prohibition is punishable as a first degree misdemeanor for any specified STD except HIV infection. If HIV infection is present, a first-time violation is punishable as a third degree felony and a second or subsequent violation is punishable as a second degree felony.

Currently, the term "sexual intercourse" is not statutorily defined, and, as a result, criminal defendants have challenged the term's meaning on appeal. The Third and Fifth District Courts of Appeals (DCAs) have held that the term includes sexual conduct between persons regardless of gender, while the Second DCA has held that the term only describes the placement of a male's sex organ inside a female's sex organ. The Florida Supreme Court has not ruled on the issue.

The proposed committee substitute (PCS) amends s. 384.24, F.S., to substitute the term "sexual conduct" for the term "sexual intercourse." The PCS defines "sexual conduct" to mean conduct between persons, regardless of gender, which is capable of transmitting a STD, including but not limited to contact between a: (a) penis and a vulva or an anus; or (b) mouth and a penis, a vulva, or an anus. Accordingly, under the PCS, the scope of prohibited conduct for persons with specified STDs is expanded beyond the interpretation set forth by the Second DCA. Additionally, the PCS adds human papillomavirus and hepatitis to the list of specified STDs for which certain sexual conduct is prohibited.

The Criminal Justice Impact Conference has not yet met to determine the impact of this PCS. It is anticipated that the PCS will increase the need for prison beds due to its expansion of prohibited sexual conduct that is punishable as a third degree felony. The PCS may also increase the need for jail beds due to its expansion of prohibited sexual conduct and the list of STDs which are subject to first degree misdemeanor penalties. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The PCS takes effect on October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 384, F.S., is entitled the, "Control of Sexually Transmissible Disease Act" (hereinafter referred to as "the Act"). Section 384.22, F.S., specifies that the intent of the Act is to "provide a program that is sufficiently flexible to meet emerging needs, [that] deals efficiently and effectively with reducing the incidence of sexually transmissible diseases, and [that] provides patients with a secure knowledge that information they provide will remain private and confidential."

Under the Act, certain sexual behavior is prohibited for persons infected with specified sexually transmissible diseases (STDs). Specifically, s. 384.24, F.S., makes it unlawful for a person to have "sexual intercourse" if the person:

- Knows he or she is infected with one or more specified STDs;
- Has been informed that the STD is transmissible to another person through sexual intercourse; and
- Has not first informed the other person of the presence of the STD and gained the person's consent to the sexual intercourse.

The specified STDs are: (1) chancroid; (2) gonorrhea; (3) granuloma inguinale; (4) lymphogranuloma venereum; (5) genital herpes simplex; (6) chlamydia; (7) nongonococcal urethritis (NGU); (8) pelvic inflammatory disease (PID)/acute salpingitis; (9) syphilis; and (10) human immunodeficiency virus (HIV) infection.¹ This list of STDs has not been statutorily updated since 1988.² Since that time, human papillomavirus (HPV)³ and hepatitis types A through E⁴ have been identified as sexually transmissible diseases.⁵

A violation of the prohibition is punishable as a first degree misdemeanor⁶ for any specified STD, except HIV infection.⁷ If HIV infection is present, a first-time violation is punishable as a third degree felony⁸ and a second or subsequent violation is punishable as a second degree felony.^{9, 10}

¹ s. 384.24(1) and (2), F.S.

² See Ch. 88-80, s. 27 (1988).

³ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Human Papillomavirus (HPV)*, <https://www.cdc.gov/hpv/parents/whatishpv.html> (last visited January 29, 2017)(stating "HPV is transmitted through intimate skin-to-skin contact. You can get HPV by having vaginal, anal, or oral sex with someone who has the virus. It is most commonly spread during vaginal or anal sex.").

⁴ NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES, *Hepatitis A through E (Viral Hepatitis)*, <https://www.niddk.nih.gov/health-information/liver-disease/viral-hepatitis> (last visited January 29, 2017)(indicating that hepatitis A through E is transmissible through sexual conduct and other means).

⁵ See also Rule 64D-3.028(23), F.A.C. (last amended November 24, 2008)(Florida Department of Health rule defining "Sexually Transmissible Disease" as "Acquired Immune Deficiency Syndrome (AIDS), Chancroid, Chlamydia trachomatis, Gonorrhea, Granuloma Inguinale, Hepatitis A through D, Herpes simplex virus (HSV), Human immunodeficiency virus Infection (HIV), Human papillomavirus (HPV), Lymphogranuloma Venereum (LGV), and Syphilis.").

⁶ A first degree misdemeanor is punishable by up to one year imprisonment and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁷ s. 384.34(1), F.S.

⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹⁰ Other Florida Statutes criminalize additional behavior that could result in the transmission of STDs. See, e.g., s. 381.0041, F.S. (makes it a third degree felony for a person who knows he or she is infected with HIV and who has been informed that they may communicate the disease by donating blood, plasma, organs, skin, or other human tissue, to donate blood, plasma, organs, skin, or other human tissue); s. 775.0877, F.S. (makes it a third degree felony for a person, who has previously undergone HIV testing pursuant to a court order and to whom positive test results have been disclosed, to commit a subsequent enumerated offense involving the transmission of bodily fluids from one person to another; and s. 796.08, F.S. (makes it a third degree felony for a person with HIV

Currently, the term “sexual intercourse” is not statutorily defined for purposes of the aforementioned offenses. As a result, criminal defendants charged with the offenses have argued on appeal that the term’s meaning should be limited to heterosexual penetration of the female sex organ by the male sex organ. Two District Courts of Appeal (DCAs) have rejected this argument:

- The Third DCA has held that “sexual intercourse” describes “more than just penetration of the female sex organ by the male sex organ and includes ...fellatio and penile-anal penetration....” Further, the term embraces such conduct regardless of gender.¹¹
- The Fifth DCA has held that, ““sexual intercourse” includes “vaginal, anal, and oral intercourse between persons, regardless of their gender.”¹²

In contrast, the Second DCA has held that, “sexual intercourse” is an act where a male’s penis is placed inside a female’s vagina and, therefore, s. 384.24(2), F.S., did not apply to the conduct in the case, i.e., oral sex and digital penetration between two women.¹³

The Florida Supreme Court has not ruled on this issue.

Effect of Bill

The bill amends s. 384.24, F.S., to substitute the term “sexual conduct” for the term “sexual intercourse.” In s. 384.23(3), the bill defines “sexual conduct” to mean conduct between persons, regardless of gender, which is capable of transmitting a STD, including but not limited to contact between a:

- Penis and a vulva¹⁴ or an anus; or
- Mouth and a penis, a vulva, or an anus.

Accordingly, under the bill, the scope of prohibited sexual conduct for persons with specified STDs is expanded beyond the interpretation set forth by the Second DCA.

The bill also updates the list of specified STDs to add human papillomavirus and hepatitis.

Finally, the bill reenacts s. 384.34(1) and (5), F.S., to incorporate amendments made by the bill to s. 384.24, F.S.

The bill takes effect on October 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 384.23, F.S., defining the term “sexual conduct”.

Section 2. Amends s. 384.24, F.S., expanding the scope of unlawful acts by a person infected with a STD.

Section 3. Reenacts s. 384.34(1) and (5), F.S., relating to penalties pertaining to transmission of STDs.

Section 4. Provides an effective date of October 1, 2017.

and a first degree misdemeanor for a person with other STDs to commit or procure prostitution if the person knew he or she had a positive test result and that it was possible to communicate the disease through sexual activity).

¹¹ *State v. Debaun*, 129 So. 3d 1089, 1090, 1095 (Fla. 3d DCA 2013).

¹² *State v. D.C.*, 114 So. 3d 440, 442 (Fla. 5th DCA 2013).

¹³ *L.A.P. v. State*, 62 So. 3d 693, 694 (Fla. 2d DCA 2011).

¹⁴ “Vulva” is defined as “the external parts of the female sex organs considered as a whole. Included are the labia majora, the labia minora, the clitoris, the entrance to the vagina, the opening of the urethra, the vestibule, and the mons pubis (mons veneris).”

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STORAGE NAME: pcs0165.CRJ

DATE: 2/1/2017

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: The Criminal Justice Impact Conference has not yet met to determine the impact of this bill. It is anticipated that the bill will increase the need for prison beds due to its expansion of prohibited sexual conduct that is punishable as a third degree felony.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill may increase the need for jail beds due to its expansion of prohibited sexual conduct and the list of STDs which are subject to first degree misdemeanor penalties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to sexually transmissible diseases;
 3 amending s. 384.23, F.S.; defining the term "sexual
 4 conduct"; amending s. 384.24, F.S.; expanding the
 5 scope of unlawful acts by a person infected with a
 6 sexually transmissible disease; expanding the list of
 7 sexually transmissible diseases; reenacting s.
 8 384.34(1) and (5), F.S., relating to penalties
 9 pertaining to transmission of sexually transmissible
 10 diseases, to incorporate the amendment made by the act
 11 to s. 384.24; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 384.23, Florida Statutes, is amended to
 16 read:

17 384.23 Definitions.—As used in this chapter, the term:

- 18 (1) "Department" means the Department of Health.
 19 (2) "County health department" means agencies and entities
 20 as designated in chapter 154.

21 (3) "Sexual conduct" means conduct between persons,
 22 regardless of gender, which is capable of transmitting a
 23 sexually transmissible disease, including but not limited to
 24 contact between a:

25 (a) Penis and a vulva or an anus; or

26 (b) Mouth and a penis, a vulva, or an anus.

27 ~~(4)~~⁽³⁾ "Sexually transmissible disease" means a bacterial,
 28 viral, fungal, or parasitic disease determined by rule of the
 29 department to be sexually transmissible, to be a threat to the
 30 public health and welfare, and to be a disease for which a
 31 legitimate public interest will be served by providing for
 32 prevention, elimination, control, and treatment. The department
 33 must, by rule, determine which diseases are to be designated as
 34 sexually transmissible diseases and shall consider the
 35 recommendations and classifications of the Centers for Disease
 36 Control and Prevention and other nationally recognized medical
 37 authorities in that determination. Not all diseases that are
 38 sexually transmissible need be designated for the purposes of
 39 this act.

40 Section 2. Section 384.24, Florida Statutes, is amended to
 41 read:

42 384.24 Unlawful acts.—

43 (1) It is unlawful for a ~~any~~ person who has chancroid,
 44 gonorrhea, granuloma inguinale, lymphogranuloma venereum,
 45 genital herpes simplex, chlamydia, nongonococcal urethritis
 46 (NGU), pelvic inflammatory disease (PID)/acute salpingitis,
 47 human papillomavirus, hepatitis, or syphilis, when the ~~such~~
 48 person knows he or she is infected with one or more of these
 49 diseases and when the ~~such~~ person has been informed that he or
 50 she may communicate this disease to another person through

51 | sexual conduct ~~intercourse~~, to engage in ~~have~~ sexual conduct
 52 | ~~intercourse~~ with another ~~any other~~ person, unless the ~~such~~ other
 53 | person has been informed of the presence of the sexually
 54 | transmissible disease and has consented to the sexual conduct
 55 | ~~intercourse~~.

56 | (2) It is unlawful for a ~~any~~ person who has human
 57 | immunodeficiency virus infection, when the ~~such~~ person knows he
 58 | or she is infected with this disease and when the ~~such~~ person
 59 | has been informed that he or she may communicate this disease to
 60 | another person through sexual conduct ~~intercourse~~, to engage in
 61 | ~~have~~ sexual conduct ~~intercourse~~ with another ~~any other~~ person,
 62 | unless the ~~such~~ other person has been informed of the presence
 63 | of the sexually transmissible disease and has consented to the
 64 | sexual conduct ~~intercourse~~.

65 | Section 3. For the purpose of incorporating the amendment
 66 | made by this act to section 384.24, Florida Statutes, in a
 67 | reference thereto, subsections (1) and (5) of section 384.34,
 68 | Florida Statutes, are reenacted to read:

69 | 384.34 Penalties.—

70 | (1) Any person who violates the provisions of s. 384.24(1)
 71 | commits a misdemeanor of the first degree, punishable as
 72 | provided in s. 775.082 or s. 775.083.

73 | (5) Any person who violates s. 384.24(2) commits a felony
 74 | of the third degree, punishable as provided in s. 775.082, s.
 75 | 775.083, or s. 775.084. Any person who commits multiple

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76 | violations of s. 384.24(2) commits a felony of the first degree,
77 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
78 | Section 4. This act shall take effect October 1, 2017.