

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 7018

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Parental Consent Requirements Before Terminating a Pregnancy

DATE: March 31, 2025

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|---------------------------------------|
| | <u>Davis</u> | <u>Brown</u> | | HP Submitted as Comm. Bill/Fav |
| 1. | <u>McVaney</u> | <u>McVaney</u> | <u>GO</u> | Pre-meeting |
| 2. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

I. Summary:

SB 7018 saves an existing public record exemption from repeal under the Open Government Sunset Review Act. The exemption protects certain information that can be used to identify a minor who is petitioning for a judicial waiver of parental consent under the Parental Notice of and Consent for Abortion Act.

The exemption protects from disclosure any identifying information held by a circuit or appellate court, the Office of Criminal Conflict and Civil Regional Counsel, or the Justice Administrative Commission. These entities may obtain the information when the minor seeks a judicial waiver from a court, when the Office of Criminal Conflict and Civil Regional Counsel represents the minor in a court proceeding, or when the Justice Administrative Commission processes payments for a court-appointed private attorney who represents the minor.

The Open Government Sunset Review Act requires the Legislature to review each public record five years after enactment. The exemption is scheduled for repeal on October 2, 2025. The bill removes the scheduled repeal date to continue the confidential and exempt status.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect October 1, 2025.

II. Present Situation:

Public Records Law

Background

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

Legislative and Judicial Records

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

“Public Records” Defined

Section 119.011(12), F.S., defines “public records” to include:

[a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are intended to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.* See also, *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); see also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

Access

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature's Exclusive Authority to Create an Exemption

Only the Legislature may create an exemption from public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and the bill must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

"Exempt" or "Confidential and Exempt"

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those that the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST. art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- It protects sensitive, personal information, the release of which would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is *expanded*, then a public necessity statement and a two-thirds vote for passage are again required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is *narrowed*, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Parental Notice of and Consent for Abortion Act

In 2020, the Legislature amended The Parental Notice of Abortion Act to also require parental *consent* for a physician to perform or induce an abortion on a minor.²⁶ Unless certain exceptions apply,²⁷ the statute now prohibits a physician from performing or inducing an abortion on a

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 390.01114, F.S.; Ch. 2020-147, s. 2.

²⁷ The requirement for parental consent has several exceptions. It does not apply if: parental notice is not required because a medical emergency exists and notice cannot be accomplished; notice has been waived by a minor who is, or has been

minor unless the physician receives a notarized, written consent statement signed, dated, and initialed on each page by the mother, father, or legal guardian. The consenting parent or guardian must also provide the physician with a copy of a government-issued proof of identification. The statute prescribes language that the statement must include, requires documentation that must be maintained in the physician's records, provides exceptions for when the consent requirement does not apply, and specifies a process to obtain a judicial waiver to "bypass" the consent requirement.²⁸

Judicial Waiver of Parental Notice and Consent Requirements, or the Judicial Bypass Proceeding

The Parental Notice of and Consent for Abortion Act authorizes a minor to petition a circuit court where she resides for a waiver of the parental notice and consent requirements. To initiate the process, a minor may file the petition under a pseudonym or by using initials, as provided by court rule. The petition must contain a statement that the petitioner is pregnant and that the notice and consent requirements of the law have not been waived. The court must advise the petitioner that she has a right to court-appointed counsel and if she requests counsel, it will be provided to her at no cost.²⁹

Once a petition is filed, the court must rule and issue written findings of fact and conclusions of law within three business days after the petition is filed. This time period may be extended at the request of the minor.³⁰

If the circuit court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the abortion.³¹ If the court finds that the minor does not possess the requisite maturity to make that determination, it must dismiss the petition.³² If the court determines by a preponderance of the evidence that the minor is a victim of child abuse or sexual abuse inflicted by her parent or guardian, or if the court determines by clear and convincing evidence that the notification or consent requirement of a parent or guardian is not in her best interest, the court must issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy.³³

married, or has had the disability of nonage removed; or notice is waived because the patient has a minor child dependent on her. Parental consent is not required if notice is not required because the minor's parent or legal guardian has waived the right to receive notice and waived the right to consent in a signed and notarized statement. The consent requirement also does not apply if the physician certifies that a medical emergency exists and there is not enough time to obtain consent. Finally, consent is not required if the minor has obtained a judicial waiver from the circuit court. See s. 390.01114(5)(b), F.S. for the full text of the statute.

²⁸ Section 390.01114(5) and (6), F.S.

²⁹ Section 390.01114(6)(a), F.S.

³⁰ Section 390.01114(6)(b)1., F.S.

³¹ Section 390.01114(6)(c), F.S.

³² *Id.*

³³ Section 390.01114(6)(d), F.S.

Roles of the Office of Criminal Conflict and Civil Regional Counsel and the Justice Administrative Commission

The Office of Criminal Conflict and Civil Regional Counsel

The Legislature created the Office of Criminal Conflict and Civil Regional Counsel in 2007 to represent people entitled to court-appointed counsel.³⁴ When a minor initiates a judicial bypass proceeding in the circuit court, a private court-appointed attorney is available to represent her upon request.³⁵ The statute is clear that private court-appointed counsel approved for this type of work is to be used first for minors who request counsel, but if no attorney is available through the clerk's list of attorneys, then the Office of Criminal Conflict and Civil Regional Counsel in that area will supply an attorney for the proceedings.³⁶ Any record that could identify a minor while in an office's possession is exempt from public disclosure requirements.

The Justice Administrative Commission

The Justice Administrative Commission is a state agency that was created in 1965 to provide administrative services for judicial-related offices.³⁷ One of the Commission's roles is to process the invoices for the attorneys who volunteer for the judicial bypass cases. Similarly, any record that could identify a minor in the Commission's possession is exempt from public disclosure requirements.

According to the Justice Administrative Commission's staff, any invoice it receives from a private attorney does not contain the full name of the minor. The Commission asks the attorneys to use only the minor's initials when submitting an invoice. Once an invoice is received, the name "Jane Doe" is entered into the system and substituted for the minor's initials. If an attorney mistakenly submits a minor's first name, the staff redacts the name and then locks the redaction so that no one may discover it.

Data Published by the Office of the State Courts Administrator – Annual Number of Petitions Filed for Judicial Bypass Waivers

The Florida Supreme Court, through the Office of the State Courts Administrator, is required to report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives the number of petitions filed for judicial bypass waivers in the previous year for each circuit court. The report must also contain the timing and manner of disposal of the petitions by each circuit.³⁸ Below is a statewide summary of the number of petitions filed in the past five years.³⁹

³⁴ Ch. 2007-62, s. 1, Laws of Fla.

³⁵ The chief judge of the circuit maintains a list of qualified attorneys in private practice, by county and by category of cases, and provides the list to the clerk of court in each county. Section 27.40(3)(a), F.S.

³⁶ Section 27.511(6)(a), F.S.

³⁷ See <https://www.justiceadmin.org/>.

³⁸ Section 390.01114(8), F.S.

³⁹ Florida Office of the State Court Administrator, *Fiscal Years 2020-2024, Parental Notice of and Consent for Abortion Act, Petitions Filed and Disposed By Circuit and County, January through December* (on file with the Senate Committee on Health Policy).

| <u>Year</u> | <u>Total Petitions Filed</u> |
|--------------|----------------------------------|
| 2024 | 130 |
| 2023 | 170 |
| 2022 | 228 |
| 2021 | 216 |
| 2020 | 195 |
| Total | 939 |

Professional Staff's Open Government Sunset Review

During the summer and fall of 2025, Senate committee staff, working with staff from the House of Representatives, conducted an Open Government Sunset Review as required by statute. Staff surveyed the state county clerks of court, the Office of Criminal Conflict and Civil Regional Counsel, and the Justice Administrative Commission to determine whether they supported continuing the public record exemption for minors seeking a judicial bypass.

Data Reported from the County Clerks of Court for Judicial Bypass Waivers

The 67 county clerks of court were surveyed to determine:

- The number of petitions that had been filed between January 2020 and November 2024, seeking a judicial waiver of parental notice and consent for termination of a pregnancy.
- The number of times the clerk's office had received a public records request for the minor's identifying information.
- Whether the office believed this information should be available to the public.
- Whether the office believed the exemption should be reenacted, repealed, or modified in some form.

Of the 67 clerk offices that received surveys, 53 offices responded for a response rate of 79 percent.

Number of Petitions Filed Seeking a Judicial Waiver from January 2020 – November 2024

The 53 clerk's offices reported that they had received a combined total of 726 petitions for judicial waiver.⁴⁰

Number of Public Records Requests Received from January 2020 – November 2024

Only one office reported a request for identifying information in the five-year span.

Whether the Minor's Identifying Information Should Be Made Available to the Public

- No – 47
- Yes, because the information should be available to the minor's parents – 1
- Only if a criminal subpoena is involved – 1

⁴⁰ The difference between the number of petitions reported by the Office of the State Courts Administrator, 939, and the number reported by the county clerks, 726, for a discrepancy of 213 petitions, could be explained by the fact that 14 county clerks did not respond to the survey.

- Did not answer the question – 4

Whether the Exemption Should be Reenacted, Repealed, or Modified

These responses varied but the majority responded that the exemption should be reenacted as it is currently written. The responses were:

- Reenact the exemption as it is currently written – 41
- Repeal the exemption because parents have a right to know – 2
- Reenact the exemption with changes because the minor’s parents should know – 3
- Did not answer the question – 7

Data Reported from the Office of Criminal Conflict and Civil Regional Counsel and Justice Administrative Commission

Office of Criminal Conflict and Civil Regional Counsel

Surveys were sent to the five regional offices, and four offices responded. The offices reported handling a total of 64 petitions from January 2020 through November 2024.

Three offices recommended reenacting the exemption as it currently exists, and one office recommended reenacting the exemption with changes.

Justice Administrative Commission

Because the Justice Administrative Commission serves in an administrative capacity to process the invoices for the attorneys who volunteer for the judicial bypass hearings, the Commission has no direct involvement with these minors. As such, the Commission did not register an opinion on whether the exemption should be repealed, reenacted as is, or reenacted with changes.

Committee Open Government Sunset Review Recommendation

Based upon a review of this public record exemption under the Open Government Sunset Review Act and information received from the clerks of county court, Offices of Criminal Conflict and Civil Regional Counsel, and the Justice Administrative Commission, committee staff recommends that the Legislature retain the public records exemption established in s. 390.01118, F.S. The clerks and volunteer attorneys support continuing the exemption to protect the privacy of the minor seeking to bypass the parental notification and consent requirements.

III. Effect of Proposed Changes:

SB 7018 continues a public records exemption that was created in 2020 which will otherwise be repealed on October 2, 2025. The exemption protects from disclosure any identifying information of a minor seeking a judicial bypass under the Parental Notice of and Consent for Abortion Act if the information is held by a circuit or appellate court, an Office of Criminal Conflict and Civil Regional Counsel, or by the Justice Administrative Commission.

Section 1 amends s. 390.01118, F.S., to remove the scheduled repeal of the public records exemption for identifying information held by the circuit and appellate courts, the Offices of Criminal Conflict and Civil Regional Counsel, or the Justice Administrative Commission.

Section 2 provides that the bill takes effect on October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not 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, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. Because this bill continues a current public records exemption beyond its current date of repeal, it does not require an extraordinary vote for enactment.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 390.01118 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.