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## **OLR Bill Analysis**

### **sSB 388**

#### ***AN ACT CONCERNING THE TASK FORCE ON VICTIM PRIVACY AND THE PUBLIC'S RIGHT TO KNOW.***

#### **SUMMARY:**

This bill:

1. narrows the exemption under the Freedom of Information Act (FOIA) for law enforcement records identifying minor witnesses;
2. creates a procedure allowing members of the public to view and seek copies of images of homicide victims, which the law allows an agency to keep confidential if disclosure would constitute an unwarranted invasion of privacy; and
3. requires the Legislative Program Review and Investigations Committee to study all aspects of victim privacy and recommend legislative changes to the Government Administration and Elections and Judiciary committees by January 1, 2015.

EFFECTIVE DATE: October 1, 2014, except for the study provision, which is effective upon passage.

#### **RECORDS IDENTIFYING MINOR WITNESSES**

The bill narrows the exemption from disclosure under FOIA for law enforcement records regarding minor witnesses by limiting it to records of witnesses to:

1. a drug sale or possession crime or other offense under the statutes regulating dependency-producing drugs;
2. a sexual assault, prostitution, or enticing a minor crime or the portion of the risk of injury crime involving sexual contact; or

3. a violent crime.

The bill also specifies that a minor, currently defined as someone under age 18, must be under age 18 at the time of witnessing the crime or making a statement about it to a law enforcement agency. Current law applies to minor witnesses of any crime.

This exemption allows agencies to keep law enforcement records confidential. By law, law enforcement records may be withheld from disclosure if: (1) they were created in connection with detecting or investigating a crime and are not otherwise available to the public and (2) the agency determines that disclosure would not be in the public interest because it discloses a witness' identity.

## **IMAGES OF HOMICIDE VICTIMS**

### ***Viewing and Seeking Copies of Images***

FOIA requires agencies to disclose public records unless a federal or state statute or specific exemption within FOIA provides otherwise. The bill requires agencies to allow people to view images of homicide victims, regardless of whether an agency could withhold them from disclosure as an unwarranted invasion of personal privacy under FOIA (see below). Viewing must take place at the agency's office or place of business during regular office or business hours, as required for other records under FOIA.

The bill prohibits an agency from providing a copy or permitting the copying of the image if the agency reasonably believes copying could be an unwarranted invasion of personal privacy. Anyone denied a copy can appeal the agency's decision to the Freedom of Information Commission (FOIC) under the bill and current law.

Under the bill, an agency that receives notice of an appeal must make a reasonable effort to notify the next of kin of the victim who is the subject of the requested record or the next of kin's legal representative. The next of kin or legal representative can intervene as a party in the appeal before the FOIC. The bill places the burden of proof on the public agency that is claiming that copying an image

could be an unwarranted invasion of personal privacy.

The bill makes it a class A misdemeanor to remove, copy, or duplicate an image in violation of the bill's provisions. Each distinct violation is a separate offense. By law, a class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both.

### ***Scope of Exemption from Disclosure***

Current law allows an agency to withhold from disclosure under FOIA a federal, state, or municipal agency record consisting of a homicide victim's image to the extent that disclosure could reasonably be expected to be an unwarranted invasion of the victim's or his or her surviving family members' personal privacy.

The bill specifies that an agency can withhold the image if it depicts the victim's body or any portion of it. It allows the agency to withhold the image based on the unwarranted invasion of personal privacy, but no longer specifies that it is the victim's or his or her surviving family members' personal privacy.

## **BACKGROUND**

### ***Task Force on Victim Privacy and the Public's Right to Know***

PA 13-311 created this 17-member task force to consider and make recommendations regarding the balance between victim privacy under FOIA and the public's right to know. The task reported its findings and recommendations to the legislature's majority and minority leadership in January 2014.

### ***Legislative History***

The Senate referred the bill (File 610) to the Government Administration and Elections Committee which reported a substitute that:

1. eliminates provisions (a) prohibiting agencies from disclosing under FOIA records depicting homicide victims who are minors and (b) allowing agencies to withhold from disclosure under FOIA certain homicide-related law enforcement recordings and

2. allows the public to view and request copies of images of homicide victims who are minors maintained by public agencies under the procedures created by the bill.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 11 (04/01/2014)

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 8 Nay 5 (05/02/2014)