

## Sunshine Law Primer

- The Sunshine Law provides the right of citizen access to governmental proceedings at state and local levels.
- There are three basic Sunshine requirements:
  - (1) Meetings of any board or commission must be **open to the public**, and
  - (2) **Reasonable notice** of such meetings must be given, and
  - (3) **Minutes** of the meetings must be taken.
- The requirements apply to:
  - ✓ Formal commission meetings and workshops, and
  - ✓ Any other gathering whether formal or casual of two or more members, where some matter which will foreseeably come before the commission for action is discussed.
- The requirements are equally applicable to elected and appointed commissions including representative designees and ad hoc members.
- The requirements apply to communications between two or more commission members whether the meeting or discussion is in person, by telephone or via written correspondence, e-mails to include carbon copies (cc's), text messages or other electronic communications.
- The requirements apply to any discussion about a commission issue including those held during a sidebar or a recess of a commission meeting.
- The requirements do not apply to communications between individual commission members and staff.
- The requirements apply to meetings between a commission member and a non-commission member if that individual is being used as a liaison or "go-between" with another commission member.
- Members are not prohibited from meeting together socially, provided matters which may come before the commission are not discussed.
- Even when two or more commission members are participating in functions unconnected with the commission, they must refrain from discussing between themselves any matters on which foreseeable action may be taken by the commission.
- Persons who **knowingly** violate the Sunshine Law are guilty of a misdemeanor of the second degree.

- Other violations of the Sunshine Law are noncriminal infractions, punishable by a fine not exceeding \$500.
- No resolution, rule, or formal action is binding except as taken or made at an open meeting.
- Courts have held that actions taken in violation of the Sunshine Law are void.
- When in doubt, members should follow the open-meeting policy of the State.
- The Marjory Stoneman Douglas High School Public Safety Commission has an exemption from the sunshine requirements for the review of confidential or exempt information, found in Laws of Florida 2018-1 and F.S. 943.687, in order to further its ability to effectively develop recommendations for improvements for prevention and response to mass violence incidents. ***This provision only applies to portions of meetings scheduled by the Commission, and does not give commission members the ability to evade sunshine requirements. The commission will still abide by certain notetaking procedures during those closed portions of sessions in order to preserve the record of the commission.***

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#### **Art. I, s. 24(b), Florida Constitution**

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public...

#### **Section 286.011, Florida Statutes**

##### **Public meetings and records; public inspection; criminal and civil penalties.--**

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083...

### **Section 943.687, Florida Statutes**

#### **Marjory Stoneman Douglas High School Public Safety Commission.—**

(1) There is created within the Department of Law Enforcement the Marjory Stoneman Douglas High School Public Safety Commission, a commission as defined in s. 20.03.

(2)(a) The commission shall convene no later than June 1, 2018, and shall be composed of 16 members. Five members shall be appointed by the President of the Senate, five members shall be appointed by the Speaker of the House of Representatives, and five members shall be appointed by the Governor. From the members of the commission, the Governor shall appoint the chair. Appointments must be made by April 30, 2018. The Commissioner of the Department of Law Enforcement shall serve as a member of the commission. The Secretary of Children and Families, the Secretary of Juvenile Justice, the Secretary of Health Care Administration, and the Commissioner of Education shall serve as ex officio, nonvoting members of the commission. Members shall serve at the pleasure of the officer who appointed the member. A vacancy on the commission shall be filled in the same manner as the original appointment.

(b) The General Counsel of the Department of Law Enforcement shall serve as the general counsel for the commission.

(c) The Department of Law Enforcement staff, as assigned by the chair, shall assist the commission in performing its duties.

(d) The commission shall meet as necessary to conduct its work at the call of the chair and at the time designated by him or her at locations throughout the state. The commission may conduct its meetings through teleconferences or other similar means.

(e) Members of the commission are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(3) The commission shall investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in this state and develop recommendations for system improvements. At a minimum, the commission shall analyze information and evidence from the Marjory Stoneman Douglas High School shooting and other mass violence incidents in this state. At a minimum the commission shall:

(a) Develop a timeline of the incident, incident response, and all relevant events preceding the incident, with particular attention to all perpetrator contacts with local, state and national government agencies and entities and any contract providers of such agencies and entities.

(b) Investigate any failures in incident responses by local law enforcement agencies and school resource officers.

1. Identify existing policies and procedures for active assailant incidents on school premises and evaluate the compliance with such policies and procedures in the execution of incident responses.

2. Evaluate existing policies and procedures for active assailant incidents on school premises in comparison with national best practices.

3. Evaluate the extent to which any failures in policy, procedure, or execution contributed to an inability to prevent deaths and injuries.

4. Make specific recommendations for improving law enforcement and school resource officer incident response in the future.

5. Make specific recommendations for determining the appropriate ratio of school resource officers per school by school type. At a minimum, the methodology for determining the ratio should include the school location, student population, and school design.

(c) Investigate any failures in interactions with perpetrators preceding mass violence incidents.

1. Identify the history of interactions between perpetrators and governmental entities such as schools, law enforcement agencies, courts and social service agencies, and identify any failures to adequately communicate or coordinate regarding indicators of risk or possible threats.

2. Evaluate the extent to which any such failures contributed to an inability to prevent deaths and injuries.

3. Make specific recommendations for improving communication and coordination among entities with knowledge of indicators of risk or possible threats of mass violence in the future.

4. Identify available state and local tools and resources for enhancing communication and coordination regarding indicators of risk or possible threats, including, but not limited to, the Department of Law Enforcement Fusion Center or Judicial Inquiry System, and make specific recommendations for using such tools and resources more effectively in the future.

(4) The commission has the power to investigate. The commission may delegate to its investigators the authority to administer oaths and affirmations.

(5) The Commissioner of the Department of Law Enforcement shall use his or her subpoena power to compel the attendance of witnesses to testify before the commission. The Commissioner of the Department of Law Enforcement shall use his or her subpoena power to compel the production of any books, papers, records, documentary evidence, and other items, including confidential information, relevant to the performance of the duties of the commission or to the exercise of its powers. The chair or any other member of the commission may administer all oaths and affirmations in the manner prescribed by law to witnesses who appear before the commission for the purpose of testifying in any matter of which the commission desires evidence. In the case of a refusal to obey a subpoena, the commission may make application to any circuit court of this state having jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony relevant to the matter in question. Failure to obey the order may be punished by the court as contempt.

(6) The commission may call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, and such agencies shall provide such assistance in a timely manner

(7) Notwithstanding any other law, the commission may request and shall be provided with access to any information or records, including exempt or confidential and exempt information or records, which pertain to the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in Florida being reviewed by the commission and which are necessary for the commission to carry out its duties. Information or records obtained by the commission which are otherwise exempt or confidential and exempt shall retain such exempt or confidential and exempt status and the commission may not disclose any such information or records.

(8) Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(9) The commission shall submit an initial report on its findings and recommendations to the Governor, President of the Senate, and Speaker of the

House of Representatives by January 1, 2019, and may issue reports annually thereafter. The commission shall sunset July 1, 2023, and this section is repealed on that date.

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### **Florida Sunshine Law Frequently Asked Questions (FAQ's)**

- **What meetings or discussions are covered under the Sunshine Law?**
  - Any meeting where two or more commission members discuss, or plan to discuss, the business of the commission – or matters that may reasonably come before the commission in the future. That can be an informal conversation where two members wish to discuss commission business, or a full meeting of the commission. **It is important to remember that the content of communications is what primarily triggers Sunshine requirements.**
- **What communications are covered?**
  - The Sunshine Law in Florida covers **any** communication between commission members regarding matters that are the business of the commission, or that may reasonably come before the commission in the future. **The law does not distinguish between forms of communications that are covered**, so that includes **talking** to another commission member in person outside of a Sunshine meeting, or in a sidebar where communications are not being recorded; it also covers **telephone conversations, text messages, emails including carbon copies (cc's), or text communications in messenger apps.**
- **How and when may I communicate with my fellow commission members?**
  - **All** commission meetings must be held “in the sunshine,” meaning that any meeting where two or more commission members discuss, or plan to discuss, the business of the commission – or matters that may reasonably come before the commission in the future. Therefore, commission members should refrain from discussing commission business with other commission members except for publicly-noticed meetings. Those include regularly constituted phone calls and commission meetings set up by commission staff. Staff will inform you well in advance of those meetings with an agenda and materials for discussion.

- Does this mean that we may not discuss other matters that arise impromptu at Sunshine meetings if they are not on an agenda?
  - The agenda is meant to provide both commission members and the public information about what the commission plans to meet on and discuss. If other matters come up through regular discussion, the commission may discuss them even if they are not on the agenda.
- Does this mean that I may not speak with fellow commission members at all outside of “Sunshine” meetings?
  - You may continue to speak with fellow commission members on a social basis or on business or other official matters unrelated to the commission. Sunshine requirements only cover matters of “public concern,” or those matters taken up by the commission in its official capacity. Talking to a fellow commission member about dinner recommendations, for example, does not trigger Sunshine requirements simply because you are both commission members.
- Do Sunshine requirements prohibit me from discussing commission matters with staff?
  - No, Sunshine requirements only apply to discussions amongst two or more commission members. Staff are not commission members; therefore you may discuss commission business with staff to facilitate commission activities. However, staff may not be a liaison or go-between for commission members to have communications with other commission members. So you may staff to ask to set up a meeting, or to review materials, or to disseminate materials for the next meeting, etc., but you may not ask staff to ask a fellow staff member a question, only to have staff provide you with an answer outside of a Sunshine meeting.
- How can I provide materials to fellow commission members for review?
  - The business of the commission may often deal with the creation, review, and edits to written materials. Obviously, for the sake of time, it would be preferred for commission members to review materials before discussions on the record. This is where staff can assist. Should you wish for the commission to discuss revisions to a document at the next meeting, you may send your revisions to staff, and staff will provide commission members with the documents for review ahead of time, along with any other documents meant for discussion at the next meeting. Think of staff as providing a meeting

agenda and informational packet to commission members ahead of a meeting.

- *May I send drafts, edits, and other documents directly to other commission members?*
  - No, that would qualify as a direct communication between two or more commission members. Please forward those materials to staff for dissemination in a meeting packet.
- *May I email or call other commission members directly?*
  - Only for non-commission related issues. You are welcome to discuss any matters with other commission members as long it is not the business of the commission, or may reasonably become the business of the commission in the future.
- *What happens if I don't follow these requirements?*
  - A **knowing** violation of Sunshine requirements is a second degree misdemeanor under Florida law. As long as you follow the guidance provided above and that is provided by the Commission's General Counsel and staff, you have nothing to worry about.
- *Where can I go for further advice?*
  - Please contact the commission's General Counsel or staff if you have any questions or concerns about how to comply with state Sunshine requirements.