

STORAGE NAME: h1105s1z.go
DATE: Aug 18, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1105 (similar provisions passed in SB 348, which became law as Chapter 98-9, Laws of Florida)

RELATING TO: Public Records/Minors/Statements

SPONSOR(S): Committee on Governmental Operations, Representative Albright and others

COMPANION BILL(S): SB 348

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
- (2)
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I. FINAL ACTION STATUS:

CS/SB 1105 was carried over in the House from the 1997 Session. On March 18, 1998 in Senate Session it was laid on the table, and SB 348 was substituted. On April 11, 1998, SB 348 became law without the Governor's signature. as Chapter 98-9, Laws of Florida. This Bill Research applies to SB 348, except that Section VII, the Amendments section, applies to CS/HB 1105.

II. SUMMARY:

SB 348, which has become Chapter 98-9, Laws of Florida, creates a specific public records exemption for certain identifying information contained in videotaped statements of minors alleged to be, or who are, victims of sexual battery, lewd acts, or other sexual misconduct proscribed in certain statutes.

Under this act, victim, or alleged victim identity information in such videotaped statements is confidential and exempt from the provisions of s. 119.07(1), F.S., and Art. I, s. 24(a), Florida Constitution, if the statement is made in regard to a specified sexual offense. This act allows any properly authorized state or federal agency, and other specified persons, to access such statements, notwithstanding any other provisions in the act.

This act provides for criminal penalties for disclosure of victim identity information to unauthorized parties.

This act provides that the Legislature finds this exemption to be a public necessity in order to protect child victims and aid law enforcement agencies in investigating and prosecuting sexual offenders.

This act appears to have no fiscal impact on state or local government.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Laws

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

[e]very person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, also provides that the legislature may, by general law, exempt public records from the requirements of s. 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.

However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Crime Victim Exemptions from the Public Records Laws

Section 119.07(3)(s), F.S., exempts “[a]ny **document** which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of the crime, which document is regularly received by any agency that regularly receives information from or concerning the victims of crime” from the provisions of s. 119.07(1), F.S., and Art. I, Sec. 24(a), Florida Constitution. Additionally, any other information not otherwise confidential or exempt from s. 119.07(1), F.S., which reveals the home or employment telephone number, home or employment address, or personal assets of a victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from s. 119.07(1), F.S., and Art. I, Sec. 24(a), Florida Constitution, upon the victim’s written request and which includes official verification that an applicable crime has occurred. Such information ceases to be exempt five years after receipt of the victim’s request. Notwithstanding the above exemption, any state or federal agency authorized by law to have access to such documents will be granted access to the documents in furtherance of such agency’s statutory duties. An “agency” is defined in s. 119.011(2), F.S., as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law ... and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” Videotaped statements may not fall within the term “document,” which is undefined for purposes of ch. 119, F.S.; therefore, videotaped statements of minor crime victims do not appear to be exempt under s. 119.07(3)(s), F.S.

However, certain videotaped statements of minor crime victims may be exempt under other statutory provisions. Section 119.07(3)(b), F.S., exempts all active criminal intelligence information and active criminal investigative information from the requirements of s. 119.07(1), F.S. Videotaped statements of minor victims that are part of **active** criminal investigative or intelligence records thus should be exempt -- while the investigation or intelligence gathering operation is active (according to s. 119.011(3)(d), F.S.).

Section 119.07(3)(f), F.S., exempts from s. 119.07(1), F.S., and Art. 1, Sec. 24(a), Florida Constitution, any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which identifies:

- the victim of a crime of sexual battery defined in ch. 794, F.S.;
- the victim of a crime of lewd, lascivious, or indecent assault upon or in the presence of a child, as defined in ch. 800, F.S.; or
- the victim of a crime of child abuse as defined in ch. 827, F.S.

This exemption also applies to any criminal intelligence information, criminal investigative information, or other criminal record, including those portions of court records and proceedings, which may reveal the identity of a victim of any sexual offense. This exemption appears to apply to videotaped statements of minor victims of the sexual offenses specified, which do not include offenses regarding obscene literature. Note that this exemption does not require the exempted information to be part of an active criminal investigation or criminal intelligence gathering operation.

The public records exemptions contained in ss. 119.07(3)(b), 119.07(3)(f), and 119.07(3)(s), F.S., only make the specified records exempt from s. 119.07(1), F.S., and Art. I, Sec. 24(a), Florida Constitution, rather than confidential. The practical significance of this non-confidentiality is that such records may be revealed by the records custodian to other parties (such as other agencies), at the custodian's discretion.

Some agencies are concerned that certain videotaped statements of minor victims of sexual offenses may be revealed to members of the public or other parties despite the existing public records exemptions (phone conversation with Brad King, State Attorney, Fifth Judicial Circuit, March 26, 1997).

B. EFFECT OF PROPOSED CHANGES:

This act creates a specific public records exemption for certain identifying information found in videotaped statements of minor victims of sexual battery, lewd acts, or other sexual misconduct proscribed in the following:

- ch. 800, F.S. (lewdness or indecent exposure),
- s. 794.011, F.S. (sexual battery),
- s. 827.071, F.S. (abuse of children),
- s. 847.012, F.S. (sale or distribution of harmful materials to persons under 18 years of age),
- s. 847.0125, F.S. (retail display of materials harmful to minors),
- s. 847.013, F.S. (exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations),
- s. 847.0133, F.S. (showing obscene material to minors), or
- s. 847.0145, F.S. (selling or buying of minors for the purpose of portraying sexually explicit conduct).

Under this act, such identifying information contained in videotaped statements of minor victims are confidential and exempt from the provisions of s. 119.07(1), F.S., and Art. I, Sec. 24(a), Florida Constitution, if the statement is held by any agency, and if the statement is made in regard to the specified sexual offenses.

This act allows any properly authorized state or federal agency to access such statements, notwithstanding any other provisions in the act. It also recognizes specified persons, including defendants, defendants' attorneys, or court-specified persons, may have such videotaped information disclosed to them.

The public records exemption contained in this act is subject to the Open Government Sunset Review Act of 1995, in accordance with s. 119.15, F.S. This exemption will be

automatically repealed on October 2, 2003, unless the Legislature reviews the exemption and reenacts it.

This act provides that the Legislature finds this public records exemption to be a public necessity in order to protect children who are victims of sexual offenses. This exemption will help the state to prosecute persons who commit such crimes by lessening the inhibitions of child victims when they make videotaped statements that may be used later as evidence in a court proceeding. If such statements are protected from public scrutiny, the child will not be as fearful in making such statements. Additionally, the protection of the child victim's identity safeguards the reputation and good name of the victim.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

N/A

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the act prohibit, or create new government interference with, any presently lawful activity?

Yes. This act prohibits certain agencies from releasing portions of certain videotaped statements of minor crime victims to members of the public. These statements may be currently subject to public disclosure.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 119.07

E. SECTION-BY-SECTION RESEARCH:

Section 1 -- Amends s. 119.07(3)(s), F.S.; provides that victim information found in any videotaped statement of a minor who is a victim, or alleged victim, of certain specified sexual offenses, held by any agency, which is made in regard to the specified offenses, is confidential and exempt from public disclosure; provides that the exemption is subject to the Open Government Sunset Review Act of 1995, and will stand repealed on October 2, 2003, unless the Legislature reviews and reenacts the exemption; provides that public officers or employees who have access to such videotaped statements may not willfully and knowingly disclose videotaped identifying information to unauthorized persons; provides that authorized government agencies, persons assisting in the investigation or prosecution of the alleged offense, the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged crime, may access such information; and provides a criminal penalty for unauthorized disclosure of protected information.

Section 2 -- Provides a public necessity statement for the exemption described in section 1, above.

Section 3 -- Provides an effective date of upon becoming a law.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee adopted one amendment that accomplishes the following:

- requires that the exempted videotaped statements must be made in regard to the sexual offenses specified in this bill, and provides that any such videotaped statement is exempt;
- exempts specified videotaped statements which are held by any agency rather than only those statements held by agencies that regularly receive such statements;
- makes the specified videotaped statements confidential as well as exempt, thus preventing agencies holding these videotapes from giving them to other parties (such as other agencies) without proper authorization; and
- changes "state or federal" to "any governmental agency" in order to make sure that any authorized agency, including local agencies, may obtain the statements if that agency is properly authorized by statute.

VIII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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