

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: January 15, 1998 Revised: 1/22/98 _____

Subject: Public Records

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Rhea	Wilson	GO	Fav/1 amendment
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 348 provides that a videotaped statement of a minor who is the victim of a specified sexual crime is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution, provided that the videotaped statement relates to one of the sexual offenses specified. Notwithstanding the exemption, any governmental agency that is authorized to have access to such statements by any provision of law must be granted access to the videotaped statement in furtherance of that agency's statutory duties. The videotaped statement retains its confidential and exempt status regardless of whether the agency creates the videotaped statement or receives the videotape from another agency.

The bill amends section 119.07(3)(s), Florida Statutes.

II. Present Situation:

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level.¹ Article I, s. 24, State Constitution, provides:

- (a) Every 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

¹Article I, s. 24 of the State Constitution.

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.

The Public Records Law² specifies the conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. The Public Records Law states that, unless specifically exempted, all agency³ records are to be available for public inspection. The term “public record” is broadly defined to mean:

All 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.⁴

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 used to perpetuate, communicate or formalize knowledge.⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24, State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

The Open Government Sunset Review Act of 1995⁸ states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the

²Chapter 119, F.S.

³The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Florida Constitution also establishes a right of access to any public record 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 those records exempted by law or the state constitution.

⁴Section 119.011(1), F.S.

⁵*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

⁷Art. I, s. 24(c) of the State Constitution.

⁸Section 119.15, F.S.

exemption meets one of three specified criteria and if 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. The three statutory criteria are if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁹

Specific public records exemptions are contained within the Public Records Law.¹⁰ Currently, s. 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 s 24, Art. I, State Constitution (*emphasis added*). For example, if the Department of Children and Families receives a document from a law enforcement agency relating to the sexual abuse of a minor, that document is exempt if it reveals the identity or certain other identifying information about the victim.

Further, any *information* not otherwise held 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 upon the victim’s written request and upon 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 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 its statutory duties.¹¹

Videotaped statements may not fall within the term “document,” which is undefined for purposes of ch. 119, F.S., and as a result, videotaped statements of minors who are victims of crime do not appear to be exempt under s. 119.07(3)(s), F.S.

⁹Section 119.15(4)(b), F.S.

¹⁰Section 119.07(3), F.S.

¹¹Section 119.07(3)(s), F.S.

Certain videotaped statements of minors who are victims of crime may be exempt under other statutory provisions, however. For example, s. 119.07(3)(b), F.S., exempts all *active* criminal intelligence information¹² and *active* criminal investigative information¹³ compiled or collected by a criminal justice agency¹⁴ from the requirements of s. 119.07(1), F.S. Thus, videotaped statements of minors who are victims of crime that are part of active criminal investigative or intelligence records should be exempt while the investigation or intelligence gathering operation is *active*.¹⁵

Additionally, s. 119.07(3)(f), F.S., exempts 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.; and,
- 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 minors who are victims of the sexual offenses specified, which do not include offenses regarding obscene literature under ch. 847, F.S.

The public records exemptions contained in ss. 119.07(3)(b) and 119.07(3)(s), F.S., only make the specified records exempt from s. 119.07(1), F.S., and s. 24, Art. I, State Constitution, rather than confidential. It is important to note that there is a difference between those records the Legislature has determined to be exempt from the mandatory public inspection requirements of s. 119.07(1), F.S., and those which are exempt *and* confidential. If the Legislature makes certain information confidential, with no provision for its release such that its confidential status will be

¹²The term “criminal intelligence information” is defined s. 119.011(3)(a), F.S., to mean “. . . 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.”

¹³The term “criminal investigative information” is defined by s. 119.011(3)(b), F.S., to mean “. . . 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.”

¹⁴Section 119.011(4), F.S., defines a criminal justice agency to mean “. . . any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or 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 action 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. The term also includes the Department of Corrections.

¹⁵Section 119.011(3)(d), F.S.

maintained, such information may not be released to anyone other than to the persons or entities designated in the statute.

III. Effect of Proposed Changes:

Senate Bill 348 provides that a videotaped statement of a minor who is the victim of a specified sexual crime is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution, provided that the videotaped statement relates to the specified offense. The specified offenses are: sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S.,¹⁶ or in s. 794.011, F.S.;¹⁷ s. 827.071, F.S.;¹⁸ s. 847.012, F.S.;¹⁹ s. 847.0125, F.S.;²⁰ s. 847.103, F.S.;²¹ s. 847.0133, F.S.;²² and s. 847.0145, F.S.²³

The videotaped statement retains its confidential and exempt status regardless of whether the agency creates or regularly receives information from or concerning victims of crime. Notwithstanding the exemption, any governmental agency that is authorized to have access to such statements by any provision of law must be granted access to the videotaped statement in furtherance of that agency's statutory duties.

The bill provides a statement of public necessity justifying the exemption. The basis for the exemption is that there is a public necessity to protect minors who are victims of sexual crimes from having their videotaped statements that contain the minor's statements regarding sexual abuse or misconduct perpetrated against them exposed to the public. This protection is necessary to enable the state to prosecute effectively and efficiently persons who commit such crimes and at the same time to minimize the trauma to the minor victims and the inhibitions that will result if the minors, or their guardians, are fearful that such videotapes can be released for public consumption during or after any court proceedings. The bill provides that if such videotapes were subject to release, the state's ability to prosecute sexual crimes and abuse involving minors would be significantly impaired.

Additionally, the bill provides that the identity of minors who are victims of sexual crimes is information of a sensitive personal nature. The release of such information by the release of videotaped statements given by minors would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to their good name or reputation.

¹⁶Chapter 800, F.S., relates to lewdness and indecent exposure.

¹⁷Section 794.011, F.S., relates to sexual battery.

¹⁸Section 827.071, F.S., outlines the penalties for forcing a child to perform sexual acts.

¹⁹Section 847.012, F.S., prohibits the sale or distribution of harmful materials to minors.

²⁰Section 847.0125, F.S., prohibits the retail display of materials that are harmful to minors.

²¹Section 847.013, F.S., outlines various offenses and penalties relating to exposing a minor to harmful motion pictures, exhibitions, shows, presentations, or representations.

²²Section 847.0133, F.S., protects minors from obscene materials and acts.

²³Section 847.0145, F.S., prohibits an adult or other person from selling or buying a minor.

The exemption would be subject to the Open Government Sunset Review Act of 1995, and would repeal on October 2, 2003, unless reenacted by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c), State Constitution, permits the Legislature to exempt records from the requirements of Art. I, s. 24(a), State Constitution, provided that the law creating the exemption: (a) states with specificity the public necessity justifying the exemption; and (b) is no broader than necessary to accomplish the stated purpose of the law. Senate Bill 348, which relates only to exemptions, contains a statement of the public necessity that justifies the creation of the exemption based upon at least two purposes: (1) the exemption allows the state to effectively and efficiently prosecute persons who commit sexual crimes against minors; and (2) the identity of minors who are victims of sexual abuse or sexual crimes is information of a sensitive personal nature and, if released, would be defamatory or cause unwarranted damage to the good name or reputation of the minor.

Senate Bill 348 states with specificity the public necessity justifying the exemption, as required by the Florida Constitution. A constitutional issue, however, is raised by the breadth of the exemption created by the bill. Article I, s. 24(c), State Constitution, provides that legislative exemptions “. . . shall be no broader than necessary to accomplish the stated purpose of the law.” A videotape could be edited to remove statements such as the victim’s name and address. Further, current technological capabilities would permit alteration of the victim’s face or voice on the videotaped statement, thereby providing some protection of the victim’s identity while still permitting public access to the public record. Because the entire videotaped statement of the minor is exempted, and not just information in the videotape which identifies the minor, it could be argued that the exemption is overly broad under the State Constitution. It might also be argued, however, that a videotape that is altered and edited in this fashion would not necessarily protect the minor victim’s identity. Other information in the videotape, such as where the victim attends school, who his or her teacher is, the child’s race, all could be used to identify the child. Thus, it could be argued that alteration and editing of a videotaped statement might be insufficient to protect the identity of a minor who is a victim of a sexual crime.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Governmental Reform and Oversight:

The amendment removes an extra “s” on page 2, line 14.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
