

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 453 w/CS Public Records Exemption/Photos/Victim of a Sexual Offense
SPONSOR(S): Adams
TIED BILLS: None **IDEN./SIM. BILLS:** SB 126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N w/CS</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>Public Safety & Crime Prevention</u>	<u></u>	<u>Whittier</u>	<u>De La Paz</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill creates a public records exemption for any criminal intelligence information or criminal investigative information which is a photograph, videotape, or image of any part of the body of the victim of a sexual offense. Such photograph, videotape, or image is confidential and exempt regardless of whether or not it identifies the victim.

This bill provides for retroactive application and future review and repeal of the exemption, and provides a statement of public necessity.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Article I, s. 24(a), Florida Constitution, sets forth the state’s public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

The Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual’s safety; however, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;

¹ Section 119.15, F.S.

- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.

Current law provides public records exemptions for certain information regarding victims of sex crimes. The law provides that the following information regarding such victim is confidential or exempt² from public disclosure:

- Any criminal intelligence information or criminal investigative information, including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery, the identity of the victim of a lewd or lascivious offense committed in the presence of a person less than 16 years of age, or the identity of the victim of the crime of child abuse.³
- Any information that reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery.⁴
- Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct, which reveals that minor's identity.⁵

Current law *does not*, however, provide a more expansive public records exemption for *any* image of a victim of a sexual offense. As a result, such images could be made available pursuant to a public records request.

In 1997, James Weeks, an inmate in the Florida correctional system, made three public record requests for documents relating to his sexual battery prosecution.⁶ When Weeks' requests went unanswered, he filed a petition for writ of mandamus in the trial court to compel the state attorney of the First Circuit to provide him with the documents requested. The state attorney produced some of the documents but claimed a public records exemption on others. He cited no statutory authority for the exemption. The trial court denied the petition, but the First District Court of Appeal reversed and remanded after finding the petition facially sufficient and the state's response (without citation of statutory authority) to be legally insufficient.⁷

On remand, the trial court found the state attorney's refusal to provide "sexually explicit assault victim records" to Weeks to be lawful pursuant to s. 119.07(3)(f), F.S., which exempts records that identify the victim of certain sexual offenses. The court also denied Weeks request for three photographs of the victim on the same authority.

Weeks appealed to the First District (*Weeks 2*) the trial court's order denying Week's request for production of the three photographs of the victim. Weeks argued that his request was limited to non-

² There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

³ Section 119.07(3)(f), F.S.

⁴ Section 119.07(3)(s)1., F.S.

⁵ Section 119.07(3)(s)2., F.S.

⁶ See *Weeks v. Golden*, 798 So.2d 848 (Fla. 1st DCA 2001) (*Weeks 2*). The above description of the Weeks' cases is from this opinion.

⁷ See *Weeks v. Golden*, 764 So.2d 633 (Fla. 1st DCA 2000) (*Weeks 1*).

identifying parts of the victim's body. The State did not dispute this, but rather argued there was competent, substantial evidence to support the court's finding. The First District disagreed.

The First District reviewed the photographs, which it indicated were "close-up shots of the victim's genital area; they depict human anatomy with no personal identifying mark or characteristic." The court stated that the photographs did not satisfy s. 119.07, F.S., because the photographs Weeks requested of the victim did not identify the victim. The court concluded that "[i]f the legislature had intended to exempt *all* photographs of victims of sexual offenses, it could have easily said so in section 119.07(3)(f)." (The Court made no determination whether the Department of Corrections could restrict Weeks from receiving the photographs as prohibited contraband.)

This bill creates a public records exemption for any criminal intelligence information or criminal investigative information which is a photograph, videotape, or image of any part of the body of a victim of a sexual offense. This exemption applies regardless of whether such photograph, videotape, or image identifies the victim.

This bill provides for retroactive application⁸ and future review and repeal of the exemption, and provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1. Amends s. 119.07(3), F.S., by creating a public records exemption for images of any part of a victim of a sexual offense.

Section 2. Provides for future review and repeal.

Section 3. Provides a statement of public necessity.

Section 4. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

⁸ On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2003, the Committee on State Administration adopted an amendment to Representative Adams' HB 453 and reported the bill favorably with CS.

The bill, as filed, created a public records exemption for any photograph, videotape, or image of any part of the body of a victim of a sexual offense. The bill with CS narrows that exemption by only applying the exemption to such photographs, videotapes, or images that are criminal intelligence information or criminal investigative information. Also, rather than creating the exemption as a new paragraph within s. 119.07(3), F.S., the bill with CS creates the exemption within paragraph (f) because that section contains a public records exemption for criminal intelligence information or criminal investigative information regarding victims of sex crimes. Finally, the bill with CS provides for retroactive application of the public records exemption, whereas the bill did not.