

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:

Background

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 exempt¹ 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, a lewd or lascivious offense committed in the presence of a person less than 16 years of age, or the crime of child abuse.²
- 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.³
- 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.⁴

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, an inmate (Dale William Weeks) made three public records requests relating to his sexual battery prosecution. The state attorney produced some, but not all, of the requested documents and claimed a public records exemption for the remaining documents; however, the state attorney did not cite the specific statutory authority. Mr. Weeks contended that his request for production of the victim photographs was limited to non-identifying parts of the victim's body rather than any facial shots. Upon the court's review of the photographs, the court concluded that the photographs did not reveal the

¹ 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.

² Section 119.07(3)(f), F.S.

³ Section 119.07(3)(s)1., F.S.

⁴ Section 119.07(3)(s)2., F.S.

identity of the victim and were therefore not exempt from public disclosure.⁵ The court stated 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).”⁶

Effect of Bill

As a result, this bill creates a public records exemption for any photograph, videotape, digital image, electronic image, recorded image, or other visual 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 constitutes criminal intelligence information, criminal investigative information, or any other record or evidence in the custody or possession of a law enforcement agency, state attorney, emergency medical service agency, or medical facility. See DRAFTING ISSUES OR OTHER COMMENTS for further details.

This bill provides for future review and repeal of the public records 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 a statement of public necessity.

Section 3. 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.

⁵ Section 119.07(3)(f), F.S., makes such photographs confidential and exempt if the photographs reveal the identity of the victim.

⁶ See *Weeks v. Golden*, 798 So.2d 848 (Fla. 1stDCA 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:

Drafting Issues

It appears that such photographs, videotapes, and images made confidential and exempt by this bill are somewhat duplicative. One could accomplish the same goal by stating that "any image of any part of the human body" of the victim of a sexual offense is confidential and exempt from public disclosure. Also, the exemption appears overly broad in that it applies to any photographs, videotapes, or images of the victim regardless of whether it is connected with the victim's investigation. As such, this exemption could be construed to apply to the victim's driver's license photo. Finally, this bill creates the public records exemption as a new paragraph within s. 119.07(3), F.S. This exemption might be better suited as a subparagraph to s. 119.07(3)(f), F.S., because that section contains a public records exemption for criminal intelligence information or criminal investigative information regarding victims of sex crimes.

Public Records Law

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. Furthermore, the Open Government Sunset Review Act of 1995⁷ 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: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁷ Section 119.15, F.S.