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Proposed Committee Substitute by the Committee on Criminal Justice

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act regarding victims of child abuse or sex crimes; amending s. 119.071, F.S.; expanding the exemption for certain victim information by making it confidential and exempt from public record requirements; expanding the exemption to include sexual offenses prohibited under chapters 796 and 847, F.S.; creating exceptions to the public record exemption; providing for future legislative review of the exemption; reorganizing the exemption; providing a statement of public necessity; repealing s. 2 of Chapter 2003-157, Laws of Florida, which provides for repeal of the exemption; amending s. 92.56, F.S.; requiring that the confidential and exempt status of certain victim information made confidential and exempt s. 119.071(2)(h), F.S., be maintained in court records and court proceedings; providing for a petition for access at the trial court; providing specified criteria for maintaining the confidential and exempt status of such information upon the filing of a petition; permitting a defendant charged with specified offenses to apply for an order of disclosure to prepare a defense; amending s. 119.0714, F.S.; conforming the provisions to changes made in s. 119.071(2)(h), F.S.; amending s. 794.03, F.S.; conforming the provisions to changes made in s. 119.071(2)(h), F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:



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30 Section 1. Paragraph (h) of subsection (2) of section  
31 119.071, Florida Statutes, is amended to read:

32 119.071 General exemptions from inspection or copying of  
33 public records.--

34 (2) AGENCY INVESTIGATIONS.--

35 (h)1. The following criminal intelligence information or  
36 criminal investigative information is confidential and exempt  
37 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

38 a. Any ~~criminal intelligence information or criminal~~  
39 ~~investigative information,~~ including the photograph, name,  
40 address, or other fact, ~~or information~~ which reveals the identity  
41 of the victim of the crime of ~~sexual battery as defined in~~  
42 ~~chapter 794; the identity of the victim of a lewd or lascivious~~  
43 ~~offense committed upon or in the presence of a person less than~~  
44 ~~16 years of age, as defined in chapter 800; or the identity of~~  
45 ~~the victim of the crime of child abuse as defined by chapter 827.~~  
46 and

47 b. Any ~~criminal intelligence information or criminal~~  
48 ~~investigative information or other criminal record,~~ including  
49 ~~those portions of court records and court proceedings,~~ which may  
50 reveal the identity of a person who is a victim of any sexual  
51 offense, including a sexual offense proscribed in chapter 794,  
52 chapter 796, chapter 800, or chapter 847 ~~is~~  
53 ~~exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~  
54 ~~Constitution.~~

55 c.2. ~~In addition to subparagraph 1., any criminal~~  
56 ~~intelligence information or criminal investigative information~~  
57 ~~that is~~ A photograph, videotape, or image of any part of the body  
58 of the victim of a sexual offense prohibited under chapter 794,  
59 chapter 796, chapter 800, or chapter 847,



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60 | regardless of whether the photograph, videotape, or image  
61 | identifies the victim, ~~is confidential and exempt from s.~~  
62 | ~~119.07(1) and s. 24(a), Art. I of the State Constitution.~~

63 | 2. Criminal investigative information and criminal  
64 | intelligence information made confidential and exempt under this  
65 | paragraph may be disclosed by a law enforcement agency:

66 | a. In the furtherance of its official duties and  
67 | responsibilities.

68 | b. For print, publication, or broadcast if the law  
69 | enforcement agency determines that such release would assist in  
70 | locating or identifying a person that such agency believes to be  
71 | missing or endangered. The information provided should be limited  
72 | to that needed to identify or locate the victim and not include  
73 | the sexual nature of the offense committed against the person.

74 | 3. This exemption applies to such confidential and exempt  
75 | photographs, videotapes, or images held as criminal intelligence  
76 | information or criminal investigative information held by a law  
77 | enforcement agency before, on, or after the effective date of the  
78 | exemption.

79 | 4. This paragraph is subject to the Open Government Sunset  
80 | Review Act in accordance with s. 119.15, and shall stand repealed  
81 | on October 2, 2013, unless reviewed and saved from repeal through  
82 | reenactment by the Legislature.

83 | Section 2. The Legislature finds that it is a public  
84 | necessity to make confidential and exempt from public records  
85 | requirements certain criminal intelligence information or  
86 | criminal investigative information which reveals the identity of  
87 | a victim of the crime of child abuse or of any sexual offense.  
88 | The Legislature also finds that it is a public necessity to make  
89 | confidential and exempt from public records requirements a



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90 photograph, videotape, or image of any part of the body of a  
91 victim of a sexual offense regardless of whether the photograph,  
92 videotape, or image identifies the victim. The Legislature finds  
93 that it is important to strengthen the protections afforded  
94 victims of sexual offenses or child abuse in order to ensure  
95 their privacy and to prevent revictimization by making such  
96 information confidential and exempt. The identity of victims of  
97 child abuse or sexual offenses is information of a sensitive  
98 personal nature. As such, this exemption serves to minimize the  
99 trauma to victims because the release of such information would  
100 compound the tragedy already visited upon their lives and would  
101 be defamatory to or cause unwarranted damage to the good name or  
102 reputation of the victims. Protecting the release of identifying  
103 information of such victims protects them from further  
104 embarrassment, harassment, or injury. The Legislature further  
105 finds that it is a public necessity that criminal intelligence  
106 information or criminal investigative information that is a  
107 photograph, videotape, or image of any part of the body of a  
108 victim of a sexual offense prohibited under chapter 794, chapter  
109 800, chapter 827, or chapter 847, Florida Statutes, be made  
110 confidential and exempt from public records requirements. The  
111 Legislature finds that such photographs, videotapes, or images  
112 often depict the victim in a graphic and disturbing fashion,  
113 frequently nude, bruised, or bloodied. Such highly sensitive  
114 photographs, videotapes, or images of a victim of a sexual  
115 offense, if viewed, copied, or publicized, could result in  
116 trauma, sorrow, humiliation, or emotional injury to the victim  
117 and the victim's family.

118 Section 3. Section 2. of Chapter 2003-157, Laws of Florida,  
119 is repealed.



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120 Section 4. Section 92.56, Florida Statutes, is amended to  
121 read:

122 92.56 Judicial proceedings and court records involving sexual  
123 offenses.--

124 (1) (a) The confidential and exempt status of criminal  
125 intelligence information or criminal investigative information  
126 made confidential and exempt pursuant to s. 119.071(2)(h) must be  
127 maintained in court records pursuant to s. 119.0714(1)(h), and in  
128 court proceedings, including testimony from witnesses.

129 (b) If a petition for access to such confidential and  
130 exempt records is filed with the trial court with jurisdiction  
131 over the alleged offense, the confidential and exempt status of  
132 such information shall be maintained by the court if the state or  
133 the victim demonstrates that: ~~All court records, including~~  
134 ~~testimony from witnesses, that reveal the photograph, name, or~~  
135 ~~address of the victim of an alleged offense described in chapter~~  
136 ~~794 or chapter 800, or act of child abuse, aggravated child~~  
137 ~~abuse, or sexual performance by a child as described in chapter~~  
138 ~~827, are confidential and exempt from the provisions of s. 24(a),~~  
139 ~~Art. I of the State Constitution and may not be made public if,~~  
140 ~~upon a showing to the trial court with jurisdiction over the~~  
141 ~~alleged offense, the state or the victim demonstrates that:~~

142 1.(a) The identity of the victim is not already known in  
143 the community;

144 2.(b) The victim has not voluntarily called public  
145 attention to the offense;

146 3.(c) The identity of the victim has not otherwise become a  
147 reasonable subject of public concern;

148 4.(d) The disclosure of the victim's identity would be  
149 offensive to a reasonable person; and



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150        ~~5.(e)~~ The disclosure of the victim's identity would:

151        ~~a.1.~~ Endanger the victim because the assailant has not been

152        apprehended and is not otherwise known to the victim;

153        ~~b.2.~~ Endanger the victim because of the likelihood of

154        retaliation, harassment, or intimidation;

155        ~~c.3.~~ Cause severe emotional or mental harm to the victim;

156        ~~d.4.~~ Make the victim unwilling to testify as a witness; or

157        ~~e.5.~~ Be inappropriate for other good cause shown.

158        (2) A ~~If the court, pursuant to subsection (1), declares~~

159        ~~that all court records or other information that reveals the~~

160        ~~photograph, name, or address of the victim are confidential and~~

161        ~~exempt from s. 24(a), Art. I of the State Constitution, the~~

162        ~~defendant charged with a the crime described in chapter 794 or~~

163        ~~chapter 800, or with child abuse, aggravated child abuse, or~~

164        ~~sexual performance by a child as described in chapter 827, may~~

165        ~~apply to the trial court for an order of disclosure of~~

166        information in court records held confidential and exempt

167        pursuant to s. 119.0714(1)(h) or maintained as confidential and

168        exempt pursuant to court order under this section. Such

169        identifying information concerning the victim may be released to

170        the defendant or his or her attorney in order to prepare the

171        defense. The confidential and exempt status of this information

172        ~~This paragraph~~ may not be construed to prevent the disclosure of

173        the victim's identity to the defendant; however, the defendant

174        may not disclose the victim's identity to any person other than

175        the defendant's attorney or any other person directly involved in

176        the preparation of the defense. A willful and knowing disclosure

177        of the identity of the victim to any other person by the

178        defendant constitutes contempt.



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179           (3) The state may use a pseudonym instead of the victim's  
180 name to designate the victim of a crime described in chapter 794  
181 or chapter 800, or of child abuse, aggravated child abuse, or  
182 sexual performance by a child as described in chapter 827, in all  
183 court records and records of court proceedings.

184           (4) The protection of this section may be waived by the  
185 victim of the alleged offense in a writing filed with the court,  
186 in which the victim consents to the use or release of identifying  
187 information during court proceedings and in the records of court  
188 proceedings.

189           (5) This section does not prohibit the publication or  
190 broadcast of the substance of trial testimony in a prosecution  
191 for an offense described in chapter 794 or chapter 800, or a  
192 crime of child abuse, aggravated child abuse, or sexual  
193 performance by a child, as described in chapter 827, but the  
194 publication or broadcast may not include an identifying  
195 photograph, an identifiable voice, or the name or address of the  
196 victim, unless the victim has consented in writing to the  
197 publication and filed such consent with the court or unless the  
198 court has declared such records not confidential and exempt as  
199 provided for in subsection (1).

200           (6) A willful and knowing violation of this section or a  
201 willful and knowing failure to obey any court order issued under  
202 this section constitutes contempt.

203           Section 5. Paragraph (h) of subsection (1) of section  
204 119.0714, Florida Statutes, is amended to read:

205           119.0714 Court files; court records; official records.--

206           (1) COURT FILES.--Nothing in this chapter shall be  
207 construed to exempt from s. 119.07(1) a public record that was



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208 made a part of a court file and that is not specifically closed  
209 by order of court, except:

210 (h) Criminal intelligence information or criminal  
211 investigative information that is confidential and exempt  
212 information or records that may reveal the identity of a person  
213 who is a victim of a sexual offense as provided in s.  
214 119.071(2) (h) .

215 Section 6. Section 794.03, Florida Statutes, is amended to  
216 read:

217 794.03 Unlawful to publish or broadcast information  
218 identifying sexual offense victim.--No person shall print,  
219 publish, or broadcast, or cause or allow to be printed,  
220 published, or broadcast, in any instrument of mass communication  
221 the name, address, or other identifying fact or information of  
222 the victim of any sexual offense within this chapter, except as  
223 provided in s. 119.071(2) (h) or unless the court determines that  
224 such information is no longer confidential and exempt pursuant to  
225 s. 92.56. Such identifying information is confidential and exempt  
226 from the provisions of s. 119.07(1). An offense under this  
227 section shall constitute a misdemeanor of the second degree,  
228 punishable as provided in s. 775.082 or s. 775.083.

229 Section 7. This act shall take effect October 1, 2008.