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Proposed Committee Substitute by the Committee on Criminal Justice

1 A bill to be entitled

2 An act relating to a review under the Open Government  
3 Sunset Review Act regarding victims; amending s. 119.071,  
4 F.S.; expanding the exemption for certain victim  
5 information by making it confidential and exempt from  
6 public record requirements; expanding the exemption to  
7 include crimes involving child pornography; creating  
8 exceptions to the public record exemption; providing for  
9 future legislative review of the exemption; reorganizing  
10 the exemption; providing a statement of public necessity;  
11 repealing s. 2 of Chapter 2003-157, Laws of Florida, which  
12 provides for repeal of the exemption; amending s. 92.56,  
13 F.S.; clarifying that the provisions apply to court  
14 proceedings; conforming the provisions to changes made in  
15 s. 119.071(2)(h), F.S.; amending s. 119.0714, F.S.;  
16 conforming the provisions to changes made in s.  
17 119.071(2)(h), F.S.; amending s. 794.03, F.S.; conforming  
18 the provisions to changes made in s. 119.071(2)(h), F.S.;  
19 providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Paragraph (h) of subsection (2) of section  
24 119.071, Florida Statutes, is amended to read:

25 119.071 General exemptions from inspection or copying of  
26 public records.--

27 (2) AGENCY INVESTIGATIONS.--



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

31           a. Any ~~criminal intelligence information or criminal~~  
32 ~~investigative information,~~ including the photograph, name,  
33 address, or other fact, ~~or information~~ which reveals the identity  
34 of the victim of the crime of ~~sexual battery as defined in~~  
35 ~~chapter 794; the identity of the victim of a lewd or lascivious~~  
36 ~~offense committed upon or in the presence of a person less than~~  
37 ~~16 years of age, as defined in chapter 800; or the identity of~~  
38 ~~the victim of the crime of child abuse as defined by chapter 827.~~  
39 and

40           b. Any ~~criminal intelligence information or criminal~~  
41 ~~investigative information or other criminal record,~~ including  
42 ~~those portions of court records and court proceedings,~~ which may  
43 reveal the identity of a person who is a victim of any sexual  
44 offense, including a sexual offense proscribed in chapter 794,  
45 chapter 800, ~~or~~ chapter 827, or chapter 847, ~~is exempt from s.~~  
46 ~~119.07(1) and s. 24(a), Art. I of the State Constitution.~~

47           c.2. ~~In addition to subparagraph 1., any criminal~~  
48 ~~intelligence information or criminal investigative information~~  
49 ~~that is~~ A photograph, videotape, or image of any part of the body  
50 of the victim of a sexual offense prohibited under chapter 794,  
51 chapter 800, ~~or~~ chapter 827, or chapter 847, regardless of  
52 whether the photograph, videotape, or image identifies the  
53 victim, ~~is confidential and exempt from s. 119.07(1) and s.~~  
54 ~~24(a), Art. I of the State Constitution.~~

55           2. Criminal investigative information and criminal  
56 intelligence information made confidential and exempt under this  
57 paragraph may be disclosed by a law enforcement agency to:



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58 a. Another governmental entity in the furtherance of its  
59 duties and responsibilities.

60 b. Any person in order to facilitate an active  
61 investigation.

62 c. A person for print, publication, or broadcast if the law  
63 enforcement agency determines that such release would assist in  
64 locating or identifying a person that such agency believes to be  
65 a victim of a sexual offense and who is believed by such agency  
66 to be missing or endangered.

67 3. This exemption applies to such confidential and exempt  
68 photographs, videotapes, or images held as criminal intelligence  
69 information or criminal investigative information held by a law  
70 enforcement agency before, on, or after the effective date of the  
71 exemption.

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

76 Section 2. The Legislature finds that it is a public  
77 necessity to make confidential and exempt from public record  
78 requirements certain criminal intelligence information or  
79 criminal investigative information which reveals the identity of  
80 a victim of the crime of child abuse or of any sexual offense.  
81 The Legislature also finds that it is a public necessity to make  
82 confidential and exempt from public record requirements a  
83 photograph, videotape, or image of any part of the body of a  
84 victim of a sexual offense regardless of whether the photograph,  
85 videotape, or image identifies the victim. The identity of  
86 victims of child abuse or sexual offenses is information of a  
87 sensitive personal nature. As such, this exemption serves to



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88 minimize the trauma to victims because the release of such  
89 information would compound the tragedy already visited upon their  
90 lives and would be defamatory to or cause unwarranted damage to  
91 the good name or reputations of the victims. Protecting the  
92 release of identifying information of such victims protects them  
93 from further embarrassment, harassment, or injury. The  
94 Legislature further finds that it is a public necessity that  
95 criminal intelligence information or criminal investigative  
96 information which is a photograph, videotape, or image of any  
97 part of the body of a victim of a sexual offense prohibited under  
98 chapter 794, chapter 800, chapter 827, or chapter 847, Florida  
99 Statutes, be made confidential and exempt from public record  
100 requirements. The Legislature finds that such photographs,  
101 videotapes, or images often depict the victim in a graphic and  
102 disturbing fashion, frequently nude, bruised, or bloodied. Such  
103 highly sensitive photographs, videotapes, or images of a victim  
104 of a sexual offense, if viewed, copied, or publicized, could  
105 result in trauma, sorrow, humiliation, or emotional injury to the  
106 victim and the victim's family.

107 Section 3. Section 2. of Chapter 2003-157, Laws of Florida,  
108 is repealed.

109 Section 4. Section 92.56, Florida Statutes, is amended to  
110 read:

111 92.56 Judicial proceedings and court records involving  
112 sexual offenses.--

113 (1) Those portions of All court records and court  
114 proceedings, including testimony from witnesses, that reveal  
115 criminal intelligence information or criminal investigative  
116 information that is confidential and exempt pursuant to s.  
117 119.071(2)(h) the photograph, name, or address of the victim of



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118 ~~an alleged offense described in chapter 794 or chapter 800, or~~  
119 ~~act of child abuse, aggravated child abuse, or sexual performance~~  
120 ~~by a child as described in chapter 827, are confidential and~~  
121 ~~exempt from the provisions of s. 24(a), Art. I of the State~~  
122 ~~Constitution, and may not be made public if, upon a showing to~~  
123 ~~the trial court with jurisdiction over the alleged offense, the~~  
124 ~~state or the victim demonstrates that:~~

125 ~~(a) The identity of the victim is not already known in the~~  
126 ~~community;~~

127 ~~(b) The victim has not voluntarily called public attention~~  
128 ~~to the offense;~~

129 ~~(c) The identity of the victim has not otherwise become a~~  
130 ~~reasonable subject of public concern;~~

131 ~~(d) The disclosure of the victim's identity would be~~  
132 ~~offensive to a reasonable person; and~~

133 ~~(e) The disclosure of the victim's identity would:~~

134 ~~1. Endanger the victim because the assailant has not been~~  
135 ~~apprehended and is not otherwise known to the victim;~~

136 ~~2. Endanger the victim because of the likelihood of~~  
137 ~~retaliation, harassment, or intimidation;~~

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

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

140 ~~5. Be inappropriate for other good cause shown.~~

141 ~~(2) If the court, pursuant to subsection (1), declares that~~  
142 ~~all court records or other information that reveals the~~  
143 ~~photograph, name, or address of the victim are confidential and~~  
144 ~~exempt from s. 24(a), Art. I of the State Constitution, The~~  
145 ~~defendant charged with the crime described in chapter 794 or~~  
146 ~~chapter 800, or with child abuse, aggravated child abuse, or~~  
147 ~~sexual performance by a child as described in chapter 827, may~~



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148 | apply to the trial court for an order of disclosure of  
149 | identifying information concerning the victim in order to prepare  
150 | the defense. This paragraph may not be construed to prevent the  
151 | disclosure of the victim's identity to the defendant; however,  
152 | the defendant may not disclose the victim's identity to any  
153 | person other than the defendant's attorney or any other person  
154 | directly involved in the preparation of the defense. A willful  
155 | and knowing disclosure of the identity of the victim to any other  
156 | person by the defendant constitutes contempt.

157 |         (3) The state may use a pseudonym instead of the victim's  
158 | name to designate the victim of a crime described in chapter 794  
159 | or chapter 800, or of child abuse, aggravated child abuse, or  
160 | sexual performance by a child as described in chapter 827, in all  
161 | court records and records of court proceedings.

162 |         (4) The protection of this section may be waived by the  
163 | victim of the alleged offense in a writing filed with the court,  
164 | in which the victim consents to the use or release of identifying  
165 | information during court proceedings and in the records of court  
166 | proceedings.

167 |         (5) This section does not prohibit the publication or  
168 | broadcast of the substance of trial testimony in a prosecution  
169 | for an offense described in chapter 794 or chapter 800, or a  
170 | crime of child abuse, aggravated child abuse, or sexual  
171 | performance by a child, as described in chapter 827, but the  
172 | publication or broadcast may not include an identifying  
173 | photograph, an identifiable voice, or the name or address of the  
174 | victim, unless the victim has consented in writing to the  
175 | publication and filed such consent with the court ~~or unless the~~  
176 | ~~court has declared such records not confidential and exempt as~~  
177 | ~~provided for in subsection (1).~~



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

181 Section 5. Paragraph (h) of subsection (1) of section  
182 119.0714, Florida Statutes, is amended to read:

183 119.0714 Court files; court records; official records.--

184 (1) COURT FILES.--Nothing in this chapter shall be  
185 construed to exempt from s. 119.07(1) a public record that was  
186 made a part of a court file and that is not specifically closed  
187 by order of court, except:

188 (h) Criminal intelligence information or criminal  
189 investigative information that is confidential and exempt  
190 ~~information or records that may reveal the identity of a person~~  
191 ~~who is a victim of a sexual offense~~ as provided in s.  
192 119.071(2)(h).

193 Section 6. Section 794.03, Florida Statutes, is amended to  
194 read:

195 794.03 Unlawful to publish or broadcast information  
196 identifying sexual offense victim.--No person shall print,  
197 publish, or broadcast, or cause or allow to be printed,  
198 published, or broadcast, in any instrument of mass communication  
199 the name, address, or other identifying fact or information of  
200 the victim of any sexual offense within this chapter, except as  
201 provided in s. 119.071(2)(h). ~~Such identifying information is~~  
202 ~~confidential and exempt from the provisions of s. 119.07(1)~~. An  
203 offense under this section shall constitute a misdemeanor of the  
204 second degree, punishable as provided in s. 775.082 or s.  
205 775.083.

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