

20081618e1

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding victims of child abuse or sex
4 crimes; amending s. 119.071, F.S.; expanding the exemption
5 for certain victim information by making it confidential
6 and exempt from public-record requirements; expanding the
7 exemption to include sexual offenses prohibited under
8 chapters 796 and 847, F.S.; creating exceptions to the
9 public record exemption; providing for future legislative
10 review of the exemption; reorganizing the exemption;
11 providing a statement of public necessity; repealing s. 2
12 of chapter 2003-157, Laws of Florida, which provides for
13 repeal of the exemption; amending s. 92.56, F.S.;
14 requiring that the confidential and exempt status of
15 certain victim information made confidential and exempt s.
16 119.071(2)(h), F.S., be maintained in court records and
17 court proceedings; providing for a petition for access at
18 the trial court; providing specified criteria for
19 maintaining the confidential and exempt status of such
20 information upon the filing of a petition; permitting a
21 defendant charged with specified offenses to apply for an
22 order of disclosure to prepare a defense; amending s.
23 119.0714, F.S.; conforming the provisions to changes made
24 in s. 119.071(2)(h), F.S.; amending s. 794.03, F.S.;
25 conforming the provisions to changes made in s.
26 119.071(2)(h), F.S.; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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20081618e1

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,

20081618e1

59 chapter 796, chapter 800, ~~or~~ chapter 827, or chapter 847,
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 c. To another governmental agency in the furtherance of its
75 official duties and responsibilities.

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

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82 Review Act in accordance with s. 119.15, and shall stand repealed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

85 Section 2. The Legislature finds that it is a public
86 necessity to make confidential and exempt from public-records
87 requirements certain criminal intelligence information or

20081618e1

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

20081618e1

117 offense, if viewed, copied, or publicized, could result in
118 trauma, sorrow, humiliation, or emotional injury to the victim
119 and the victim's family.

120 Section 3. Section 2 of chapter 2003-157, Laws of Florida,
121 is repealed.

122 Section 4. Section 92.56, Florida Statutes, is amended to
123 read:

124 92.56 Judicial proceedings and court records involving
125 sexual offenses.--

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

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

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

20081618e1

146 ~~2.(b)~~ The victim has not voluntarily called public
147 attention to the offense;

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

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

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

153 ~~a.1.~~ Endanger the victim because the assailant has not been
154 apprehended and is not otherwise known to the victim;

155 ~~b.2.~~ Endanger the victim because of the likelihood of
156 retaliation, harassment, or intimidation;

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

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

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

160 (2) A ~~If the court, pursuant to subsection (1), declares~~
161 ~~that all court records or other information that reveals the~~
162 ~~photograph, name, or address of the victim are confidential and~~
163 ~~exempt from s. 24(a), Art. I of the State Constitution, the~~
164 ~~defendant charged with a the crime described in chapter 794 or~~
165 ~~chapter 800, or with child abuse, aggravated child abuse, or~~
166 ~~sexual performance by a child as described in chapter 827, may~~
167 ~~apply to the trial court for an order of disclosure of~~
168 information in court records held confidential and exempt
169 pursuant to s. 119.0714(1)(h) or maintained as confidential and
170 exempt pursuant to court order under this section. Such
171 identifying information concerning the victim may be released to
172 the defendant or his or her attorney in order to prepare the
173 defense. The confidential and exempt status of this information
174 ~~This paragraph~~ may not be construed to prevent the disclosure of

20081618e1

175 the victim's identity to the defendant; however, the defendant
176 may not disclose the victim's identity to any person other than
177 the defendant's attorney or any other person directly involved in
178 the preparation of the defense. A willful and knowing disclosure
179 of the identity of the victim to any other person by the
180 defendant constitutes contempt.

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

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

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

20081618e1

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

205 Section 5. Paragraph (h) of subsection (1) of section
206 119.0714, Florida Statutes, is amended to read:

207 119.0714 Court files; court records; official records.--

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

212 (h) Criminal intelligence information or criminal
213 investigative information that is confidential and exempt
214 ~~information or records that may reveal the identity of a person~~
215 ~~who is a victim of a sexual offense~~ as provided in s.
216 119.071(2)(h).

217 Section 6. Section 794.03, Florida Statutes, is amended to
218 read:

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

20081618e1

231

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