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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 from public records requirements for certain information
6 regarding victims of child abuse or sex crimes by making
7 such information confidential and exempt and by including
8 sexual offenses related to prostitution and obscenity
9 prohibited under chapters 796 and 847, F.S., within the
10 exemption; providing exceptions to the exemption;
11 providing for review and repeal of the exemption;
12 reorganizing the exemption; providing a statement of
13 public necessity; repealing s. 2 of ch. 2003-157, Laws of
14 Florida, which provides for repeal of the exemption;
15 amending s. 92.56, F.S.; requiring that the confidential
16 and exempt status of specified victim information be
17 maintained in court records and court proceedings;
18 providing specified criteria for maintaining the
19 confidential and exempt status of such information upon
20 the filing of a petition for access thereto with a trial
21 court; permitting a defendant charged with specified
22 offenses to apply for an order of disclosure of certain
23 confidential and exempt information to prepare a defense;
24 amending s. 119.0714, F.S.; revising a specified exemption
25 from public records requirements for a public record that
26 was made part of a court file, to conform; amending s.
27 794.03, F.S., relating to a specified exception to the
28 prohibited publishing or broadcasting of identifying

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29 information relative to the victim of a sexual offense, to
 30 conform; reenacting s. 119.011(3)(c), F.S., which defines
 31 "criminal intelligence information" and "criminal
 32 intelligence information," and s. 794.024(1), F.S., which
 33 prohibits the knowing or willful disclosure of identifying
 34 information, for the purpose of incorporating the
 35 amendment to s. 119.071, F.S., in references thereto;
 36 providing an effective date.

37

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

39

40 Section 1. Paragraph (h) of subsection (2) of section
 41 119.071, Florida Statutes, is amended to read:

42 119.071 General exemptions from inspection or copying of
 43 public records.--

44 (2) AGENCY INVESTIGATIONS.--

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

49 a. Any ~~criminal intelligence information or criminal~~
 50 investigative information, including the photograph, name,
 51 address, or other fact, or information which reveals the
 52 identity of the victim of the crime of ~~sexual battery as defined~~
 53 ~~in chapter 794; the identity of the victim of a lewd or~~
 54 ~~lascivious offense committed upon or in the presence of a person~~
 55 ~~less than 16 years of age, as defined in chapter 800; or the~~

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56 ~~identity of the victim of the crime of child abuse as defined by~~
57 ~~chapter 827.~~ and

58 b. ~~Any criminal intelligence information or criminal~~
59 ~~investigative information or other criminal record, including~~
60 ~~those portions of court records and court proceedings, which may~~
61 ~~reveal the identity of a person who is a victim of any sexual~~
62 ~~offense, including a sexual offense proscribed in chapter 794,~~
63 ~~chapter 796, chapter 800, ~~or~~ chapter 827, or chapter 847 ~~is~~~~
64 ~~exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~
65 ~~Constitution.~~

66 c.2. ~~In addition to subparagraph 1., any criminal~~
67 ~~intelligence information or criminal investigative information~~
68 ~~that is~~ A photograph, videotape, or image of any part of the
69 body of the victim of a sexual offense prohibited under chapter
70 794, chapter 796, chapter 800, ~~or~~ chapter 827, or chapter 847,
71 regardless of whether the photograph, videotape, or image
72 identifies the victim, ~~is confidential and exempt from s.~~
73 ~~119.07(1) and s. 24(a), Art. I of the State Constitution.~~

74 2. Criminal investigative information and criminal
75 intelligence information made confidential and exempt under this
76 paragraph may be disclosed by a law enforcement agency:

77 a. In the furtherance of its official duties and
78 responsibilities.

79 b. Via print media, broadcast media, or other form of
80 publication if the law enforcement agency determines that such
81 release would assist in locating or identifying a person that
82 such agency believes to be missing or endangered. The
83 information provided should be limited to that needed to

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84 identify or locate the victim and not include the sexual nature
85 of the offense committed against the person.

86 3. This exemption applies to such confidential and exempt
87 photographs, videotapes, or images held as criminal intelligence
88 information or criminal investigative information held by a law
89 enforcement agency before, on, or after the effective date of
90 the exemption.

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

95 Section 2. The Legislature finds that it is a public
96 necessity to make confidential and exempt from public records
97 requirements certain criminal intelligence information or
98 criminal investigative information that reveals the identity of
99 a victim of the crime of child abuse or of any sexual offense.
100 The Legislature also finds that it is a public necessity to make
101 confidential and exempt from public records requirements a
102 photograph, videotape, or image of any part of the body of a
103 victim of a sexual offense regardless of whether the photograph,
104 videotape, or image identifies the victim. The Legislature finds
105 that it is important to strengthen the protections afforded
106 victims of sexual offenses or child abuse in order to ensure
107 their privacy and to prevent revictimization by making such
108 information confidential and exempt. The identity of victims of
109 child abuse or sexual offenses is information of a sensitive
110 personal nature. As such, this exemption serves to minimize the
111 trauma to victims because the release of such information would

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112 compound the tragedy already visited upon their lives and would
113 be defamatory to or cause unwarranted damage to the good name or
114 reputation of the victims. Protecting the release of identifying
115 information of such victims protects them from further
116 embarrassment, harassment, or injury. The Legislature further
117 finds that it is a public necessity that criminal intelligence
118 information or criminal investigative information that is a
119 photograph, videotape, or image of any part of the body of a
120 victim of a sexual offense prohibited under chapter 794, chapter
121 796, chapter 800, chapter 827, or chapter 847, Florida Statutes,
122 be made confidential and exempt from public records
123 requirements. The Legislature finds that such photographs,
124 videotapes, or images often depict the victim in a graphic and
125 disturbing fashion, frequently nude, bruised, or bloodied. Such
126 highly sensitive photographs, videotapes, or images of a victim
127 of a sexual offense, if viewed, copied, or publicized, could
128 result in trauma, sorrow, humiliation, or emotional injury to
129 the victim and the victim's family.

130 Section 3. Section 2 of chapter 2003-157, Laws of Florida,
131 is repealed.

132 Section 4. Section 92.56, Florida Statutes, is amended to
133 read:

134 92.56 Judicial proceedings and court records involving
135 sexual offenses.--

136 (1)(a) The confidential and exempt status of criminal
137 intelligence information or criminal investigative information
138 made confidential and exempt pursuant to s. 119.071(2)(h) must

139 be maintained in court records pursuant to s. 119.0714(1)(h) and
 140 in court proceedings, including testimony from witnesses.

141 (b) If a petition for access to confidential and exempt
 142 records described in paragraph (a) is filed with the trial court
 143 having jurisdiction over the alleged offense, the confidential
 144 and exempt status of such information shall be maintained by the
 145 court if ~~All court records, including testimony from witnesses,~~
 146 ~~that reveal the photograph, name, or address of the victim of an~~
 147 ~~alleged offense described in chapter 794 or chapter 800, or act~~
 148 ~~of child abuse, aggravated child abuse, or sexual performance by~~
 149 ~~a child as described in chapter 827, are confidential and exempt~~
 150 ~~from the provisions of s. 24(a), Art. I of the State~~
 151 ~~Constitution and may not be made public if, upon a showing to~~
 152 ~~the trial court with jurisdiction over the alleged offense, the~~
 153 ~~state or the victim demonstrates that:~~

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

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

158 3.(e) The identity of the victim has not otherwise become
 159 a reasonable subject of public concern;

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

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

163 a.1- Endanger the victim because the assailant has not
 164 been apprehended and is not otherwise known to the victim;

165 b.2- Endanger the victim because of the likelihood of
 166 retaliation, harassment, or intimidation;

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167 ~~c.3.~~ Cause severe emotional or mental harm to the victim;
168 ~~d.4.~~ Make the victim unwilling to testify as a witness; or
169 ~~e.5.~~ Be inappropriate for other good cause shown.

170 (2) A ~~If the court, pursuant to subsection (1), declares~~
171 ~~that all court records or other information that reveals the~~
172 ~~photograph, name, or address of the victim are confidential and~~
173 ~~exempt from s. 24(a), Art. I of the State Constitution, the~~
174 ~~defendant charged with a~~ the crime described in chapter 794 or
175 chapter 800, or with child abuse, aggravated child abuse, or
176 sexual performance by a child as described in chapter 827, may
177 apply to the trial court for an order of disclosure of
178 information in court records held confidential and exempt
179 pursuant to s. 119.0714(1)(h) or maintained as confidential and
180 exempt pursuant to court order under this section. Such
181 identifying information concerning the victim may be released to
182 the defendant or his or her attorney in order to prepare the
183 defense. The confidential and exempt status of this information
184 ~~This paragraph~~ may not be construed to prevent the disclosure of
185 the victim's identity to the defendant; however, the defendant
186 may not disclose the victim's identity to any person other than
187 the defendant's attorney or any other person directly involved
188 in the preparation of the defense. A willful and knowing
189 disclosure of the identity of the victim to any other person by
190 the defendant constitutes contempt.

191 (3) The state may use a pseudonym instead of the victim's
192 name to designate the victim of a crime described in chapter 794
193 or chapter 800, or of child abuse, aggravated child abuse, or

194 sexual performance by a child as described in chapter 827, in
 195 all court records and records of court proceedings.

196 (4) The protection of this section may be waived by the
 197 victim of the alleged offense in a writing filed with the court,
 198 in which the victim consents to the use or release of
 199 identifying information during court proceedings and in the
 200 records of court proceedings.

201 (5) This section does not prohibit the publication or
 202 broadcast of the substance of trial testimony in a prosecution
 203 for an offense described in chapter 794 or chapter 800, or a
 204 crime of child abuse, aggravated child abuse, or sexual
 205 performance by a child, as described in chapter 827, but the
 206 publication or broadcast may not include an identifying
 207 photograph, an identifiable voice, or the name or address of the
 208 victim, unless the victim has consented in writing to the
 209 publication and filed such consent with the court or unless the
 210 court has declared such records not confidential and exempt as
 211 provided for in subsection (1).

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

215 Section 5. Paragraph (h) of subsection (1) of section
 216 119.0714, Florida Statutes, is amended to read:

217 119.0714 Court files; court records; official records.--

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

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222 (h) Criminal intelligence information or criminal
 223 investigative information that is confidential and exempt
 224 ~~information or records that may reveal the identity of a person~~
 225 ~~who is a victim of a sexual offense~~ as provided in s.
 226 119.071(2) (h) .

227 Section 6. Section 794.03, Florida Statutes, is amended to
 228 read:

229 794.03 Unlawful to publish or broadcast information
 230 identifying sexual offense victim.--No person shall print,
 231 publish, or broadcast, or cause or allow to be printed,
 232 published, or broadcast, in any instrument of mass communication
 233 the name, address, or other identifying fact or information of
 234 the victim of any sexual offense within this chapter, except as
 235 provided in s. 119.071(2) (h) or unless the court determines that
 236 such information is no longer confidential and exempt pursuant
 237 to s. 92.56. ~~Such identifying information is confidential and~~
 238 ~~exempt from the provisions of s. 119.07(1).~~ An offense under
 239 this section shall constitute a misdemeanor of the second
 240 degree, punishable as provided in s. 775.082 or s. 775.083.

241 Section 7. For the purpose of incorporating the amendment
 242 made by this act to section 119.071, Florida Statutes, in
 243 references thereto, paragraph (c) of subsection (3) of section
 244 119.011, Florida Statutes, is reenacted to read:

245 119.011 Definitions.--As used in this chapter, the term:

246 (3)

247 (c) "Criminal intelligence information" and "criminal
 248 investigative information" shall not include:

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249 1. The time, date, location, and nature of a reported
250 crime.

251 2. The name, sex, age, and address of a person arrested or
252 of the victim of a crime except as provided in s. 119.071(2)(h).

253 3. The time, date, and location of the incident and of the
254 arrest.

255 4. The crime charged.

256 5. Documents given or required by law or agency rule to be
257 given to the person arrested, except as provided in s.
258 119.071(2)(h), and, except that the court in a criminal case may
259 order that certain information required by law or agency rule to
260 be given to the person arrested be maintained in a confidential
261 manner and exempt from the provisions of s. 119.07(1) until
262 released at trial if it is found that the release of such
263 information would:

264 a. Be defamatory to the good name of a victim or witness
265 or would jeopardize the safety of such victim or witness; and

266 b. Impair the ability of a state attorney to locate or
267 prosecute a codefendant.

268 6. Informations and indictments except as provided in s.
269 905.26.

270 Section 8. For the purpose of incorporating the amendment
271 made by this act to section 119.071, Florida Statutes, in a
272 reference thereto, subsection (1) of section 794.024, Florida
273 Statutes, is reenacted to read:

274 794.024 Unlawful to disclose identifying information.--

275 (1) A public employee or officer who has access to the
276 photograph, name, or address of a person who is alleged to be

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277 the victim of an offense described in this chapter, chapter 800,
278 s. 827.03, s. 827.04, or s. 827.071 may not willfully and
279 knowingly disclose it to a person who is not assisting in the
280 investigation or prosecution of the alleged offense or to any
281 person other than the defendant, the defendant's attorney, a
282 person specified in an order entered by the court having
283 jurisdiction of the alleged offense, or organizations authorized
284 to receive such information made exempt by s. 119.071(2)(h), or
285 to a rape crisis center or sexual assault counselor, as defined
286 in s. 90.5035(1)(b), who will be offering services to the
287 victim.

288 Section 9. This act shall take effect October 1, 2008.