

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1168

INTRODUCER: Criminal Justice Committee and Senators Oelrich and Lynn

SUBJECT: Public Records/Victim of a Sexual Offense

DATE: April 22, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Maclure</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Current law provides a public-records exemption for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim. The bill expands the exemption to include this information in the case of a victim of the sexual offense of video voyeurism.

The bill provides that the exemption stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the expansion as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill; thus, ensuring the public-records exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public-records or public-meetings exemption. The bill expands the current exemption; thus, it requires a two-thirds vote for final passage.

This bill substantially amends section 119.071, Florida Statutes. It reenacts ss. 92.56(1)(a), 119.0714(1)(h), and 794.024(1), F.S., to incorporate the amendment made to s. 119.071, F.S., in reference thereto.

II. Present Situation:

Public Records Law

Article I, s. 24(a) of the 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, however, may provide by general law for the exemption of records from the requirements of article I, s. 24(a) of the 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public-records or public-meetings exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.³

Public-Records Exemption for Certain Victim Information

Current law provides public-records exemption for specified criminal intelligence information⁴ or criminal investigative information.^{5,6} Included within this protection is a photograph,

¹ FLA. CONST. art. I, s. 24(c).

² Section 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

⁵ Section 119.011(3)(b), F.S., defines "criminal investigative information" to mean "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal

videotape, or image of any part of the body of the victim of certain sexual offenses,⁷ regardless of whether it identifies the victim.⁸ This information is both confidential and exempt from the statutory and constitutional public-records requirements.

Current law also provides that the confidential and exempt status of the criminal investigative information and the criminal intelligence information must be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status must be maintained by the court if the state or the victim demonstrates that certain criteria are met.⁹

In addition, criminal intelligence information or criminal investigative information which is exempt from public-records requirements as provided in s. 119.071(2)(h), F.S., retains that status if it is made part of a court file.¹⁰

Video Voyeurism

Florida criminalizes the act of video voyeurism under s. 810.145, F.S. Among other things, the act includes using an imaging device to view a person, without his or her knowledge and permission, who is privately exposing the body at a place and time when he or she would have a reasonable expectation of privacy. A person commits the offense if the person does this act for his or her own amusement, entertainment, sexual arousal, gratification, or profit.¹¹ Included within the statute are the offenses of video voyeurism dissemination and commercial video voyeurism dissemination, for distributing a video or image with knowledge or reason to believe that it was created as a result of video voyeurism.¹²

III. Effect of Proposed Changes:

The bill amends s. 119.071, F.S., to expand the current public-records exemption in that section for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim. Specifically, the bill expands the exemption to include that same information in the case of a victim of the sexual offense of video voyeurism under s. 810.145, F.S.

investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.”

⁶ Section 119.071(2)(h), F.S.

⁷ The applicable specifies sexual offenses are those prohibited under ch. 794, F.S. (sexual battery); ch. 796, F.S. (prostitution); ch. 800, F.S. (lewdness; indecent exposure); ch. 827, F.S. (abuse of children); or ch. 847, F.S. (obscenity).

⁸ Section 119.071(2)(h)1.c., F.S.

⁹ See s. 92.56, F.S.

¹⁰ Section 119.0714(1)(h), F.S.

¹¹ Section 810.145(2), F.S.

¹² Section 810.145(3) and (4), F.S.

The exemption stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.¹³

The bill also provides the following statement of public necessity for the expansion of the public-records exemption, as required by the Florida Constitution:

The Legislature finds that it is a public necessity that images of any part of the body of a victim of a sexual offense recorded or broadcast by a video voyeur not be disseminated to the public. Such displays, even if they do not identify the victim, are inappropriate for public access. Under current law, it is possible for persons to obtain access to photographs or videos of victims of video voyeurism crimes through a public-records request. These illegally and surreptitiously taken photographs or videos are usually of women, and commonly show the victims undressed or engaged in private acts of personal hygiene or sexual conduct. These activities are not intended for public view or inspection. This restriction of public access recognizes the basic privacy rights of these victims by preventing access to or possible public dissemination of such photographs or videotapes.

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill; thus, ensuring the public-records exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.¹⁴

The effective date of the bill is July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public-records or public-meetings exemption. Thus, this bill requires a two-thirds vote for passage.

Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement for a newly created or expanded public-records or public-meetings exemption. The bill expands the current exemption; thus, it includes a public necessity statement.

¹³ The review and repeal applies to the entire exemption for criminal intelligence information or criminal investigative information under s. 119.071(2)(h), F.S., and not solely the portion relating to a photograph, videotape, or image of any part of the body of a victim of a covered sexual offense.

¹⁴ In addition to statutory provisions relating to court records and files (ss. 92.56(1)(a) and 119.0714(1)(h), F.S.), the bill reenacts s. 794.024(1), F.S., which governs disclosure by a public employee or officer of personal identifying information of certain crime victims and which includes a cross-reference to the public-records exemption for criminal intelligence information and criminal investigative information. The provisions are reenacted in order to incorporate the bill's changes to s. 119.071(2)(h), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The First Amendment Foundation indicated to Senate professional staff that its position on the bill is “neutral.”

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 4, 2011:

The committee substitute specifies that the exemption stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

B. Amendments:

None.