

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 Criminal Justice Committee

BILL: SB 1168

INTRODUCER: Senators Oelrich and Lynn

SUBJECT: Public Records/Victim of a Sexual Offense

DATE: March 25, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	GO	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Current law provides a public record 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 victims of the sexual offense of video voyeurism.

The bill provides for a statement of public necessity 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 record 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 record or public meeting exemption. The bill expands the current exemption; thus, it requires a two-thirds vote for final passage.

This bill substantially amends s. 119.071, F.S., and reenacts s. 92.56(1)(a), F.S., s. 119.0714(1)(h), F.S., and s. 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 record or public meeting 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.

Public Record Exemptions for Certain Victim Information

Current law provides a public record exemption for any criminal intelligence information³ or criminal investigative information⁴ that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses,⁵ regardless of whether it identifies the victim.⁶

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

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, F.S.

³ 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."

⁴ 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 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."

⁵ This exemption specifies sexual offenses prohibited under ch. 794, F.S., ch. 796, F.S., ch. 800, F.S., ch. 827, F.S., or ch. 847, F.S.

⁶ Section 119.071(2)(h)c., F.S.

status must be maintained by the court if the state or the victim demonstrates that certain criteria are met.⁷

In addition, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public records requirements as provided in s. 119.071(2)(h), F.S.⁸

III. Effect of Proposed Changes:

The bill amends s. 119.071, F.S., to expand the current 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, to include victims of the sexual offense of video voyeurism under s. 810.145, F.S.

Under current law, the exemption is scheduled to repeal on October 2, 2013, unless reenacted. The bill does not currently extend the repeal date.

The bill also provides the following statement of public necessity 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 record exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷ See s. 92.56, F.S.

⁸ Section 119.0714(1)(h), F.S.

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 record or public meeting exemption. The bill expands the current exemption; thus, it includes a public necessity statement.

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.)

None.

B. Amendments:

None.