

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 409 Pub. Rec./Criminal Intelligence Information or Criminal Investigative Information

**SPONSOR(S):** Government Operations Subcommittee; Perry

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Williamson	Williamson
2) Judiciary Committee	15 Y, 0 N	Krol	Havlicak
3) State Affairs Committee			

### SUMMARY ANALYSIS

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.

Under current law, the public record exemption is scheduled to repeal on October 2, 2013. The bill extends the repeal date to October 2, 2016. It also provides a statement of public necessity as required by the State 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 State 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.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records Law

Article I, s. 24(a) of the State 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 State 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.<sup>1</sup>

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 Act<sup>2</sup> 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 information<sup>3</sup> or criminal investigative information<sup>4</sup> that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses,<sup>5</sup> regardless of whether it identifies the victim.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> 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."

<sup>4</sup> 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."

<sup>5</sup> This exemption specifies sexual offenses prohibited under chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S.

<sup>6</sup> Section 119.071(2)(h)c., F.S.

<sup>7</sup> See s. 92.56, F.S.

<sup>8</sup> Section 119.0714(1)(h), F.S.

## Effect of Bill

The bill expands the current 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, to include victims of the sexual offense of video voyeurism.

Under current law, the exemption is scheduled to repeal on October 2, 2013. The bill extends the repeal date to October 2, 2016. It also provides a statement of public necessity as required by the State Constitution.<sup>9</sup>

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.

### B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to expand the public record exemption for certain victim information to include victims of the sexual offense of video voyeurism.

Section 2 provides a public necessity statement.

Section 3 reenacts s. 92.56, F.S., for the purpose of incorporating the amendment made by this act to s. 119.071, F.S.

Section 4 reenacts s. 119.0714, F.S., for the purpose of incorporating the amendment made by this act to s. 119.071, F.S.

Section 5 reenacts s. 794.024, F.S., for the purpose of incorporating the amendment made by this act to s. 119.071, F.S.

Section 6 provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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<sup>9</sup> Section 24(c), Art. I of the State Constitution.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State 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.

Public Necessity Statement

Article I, s. 24(c) of the State 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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The First Amendment Foundation reports that its position on the bill is neutral.<sup>10</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Government Operations Subcommittee adopted an amendment to HB 409 and reported the bill favorably with committee substitute. The amendment 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.

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<sup>10</sup> CS/HB 409. "Week Ending March 25, 2011." First Amendment Foundation.

[http://www.floridafaf.org/index.php?option=com\\_content&view=article&id=169&Itemid=201](http://www.floridafaf.org/index.php?option=com_content&view=article&id=169&Itemid=201) (Last accessed April 5, 2011.)