

FINAL BILL ANALYSIS

BILL #: CS/HB 409

FINAL HOUSE FLOOR ACTION:

116 Y's 0 N's

SPONSOR: Rep. Perry

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/SB 1168

SUMMARY ANALYSIS

CS/HB 409 passed the House on April 27, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on May 31, 2011, chapter 2011-83, Laws of Florida, and takes effect July 1, 2011.

The bill revises the current public record exemption for certain criminal intelligence information and criminal investigative information.

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 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 bill does not appear to have a fiscal impact on state or local government.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.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 Section 24(c), Art. I of the State 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 chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S.

⁶ Section 119.071(2)(h)1.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

Effect of Proposed Changes

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.⁹

The bill 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.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁷ See s. 92.56, F.S.

⁸ Section 119.0714(1)(h), F.S.

⁹ Section 24(c), Art. I of the State Constitution.

D. FISCAL COMMENTS:

None.