

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7057      PCB CRJS 16-02      Pub. Rec./Child Pornography  
**SPONSOR(S):** Government Operations Subcommittee; Criminal Justice Subcommittee; Spano  
**TIED BILLS:** HB 7055      **IDEN./SIM. BILLS:** SB 1366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 0 N	White	White
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Williamson	Williamson
2) Judiciary Committee			

### SUMMARY ANALYSIS

Current law provides a public records exemption for information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011, 827.071, 847.012, 847.0125, 847.013, 847.0133, or 847.0145, F.S.

HB 7055, which is tied to this bill, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S.

This bill amends the public records exemption for the videotaped statement of a minor to remove references to s. 827.071, F.S., and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by HB 7055.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill takes effect on the same date that HB 7055 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 7055 takes effect on October 1, 2016.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Public Records**

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This 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, section 24(a) of the Florida Constitution.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no more broad than necessary to accomplish its purpose.<sup>3</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>5</sup>

The Act also requires the automatic repeal of a public records exemption on October 2<sup>nd</sup> of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> Specified questions must be considered by the Legislature during the review process.<sup>7</sup>

#### **Public Records Exemptions for Certain Victim Information**

Current law provides a public records exemption for the following criminal intelligence information<sup>8</sup> and criminal investigative information:<sup>9</sup>

- Information that reveals the identity of the victim of child abuse or that reveals the identity of a victim of human trafficking who is under the age of 18;
- Information that may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794,<sup>10</sup> 796,<sup>11</sup> 800,<sup>12</sup> 827,<sup>13</sup> or 847,<sup>14</sup> F.S.; and

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> This portion of a public records exemption is commonly referred to as a "public necessity statement."

<sup>3</sup> FLA. CONST. art. I, s. 24(c).

<sup>4</sup> Section 119.15, F.S.

<sup>5</sup> Section 119.15(6)(b), F.S.

<sup>6</sup> Section 119.15(3), F.S.

<sup>7</sup> Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>8</sup> Section 119.011(3)(a), F.S., defines "criminal intelligence information" as 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>9</sup> Section 119.011(3)(b), F.S., defines "criminal investigative information" as 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>10</sup> Chapter 794, F.S., relates to sexual battery.

<sup>11</sup> Chapter 796, F.S., relates to prostitution.

<sup>12</sup> Chapter 800, F.S., relates to lewdness and indecent exposure.

- Photographs, videotapes, or images of any part of the body of the victim of a sexual offense prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145,<sup>15</sup> F.S., regardless of whether it identifies the victim.<sup>16</sup>

Current law also provides that any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011,<sup>17</sup> 827.071,<sup>18</sup> 847.012,<sup>19</sup> 847.0125,<sup>20</sup> 847.013,<sup>21</sup> 847.0133,<sup>22</sup> or 847.0145,<sup>23</sup> F.S., is confidential and exempt<sup>24</sup> from public records requirements.<sup>25</sup>

## HB 7055

HB 7055, which is tied to this bill, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S. HB 7055 takes effect October 1, 2016.

### Effect of the Bill

The bill amends the public records exemption for any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct to remove references to s. 827.071, F.S.,<sup>26</sup> and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by HB 7055.

The court has held that an amendment eliminating a public records exemption applies prospectively from the effective date of the amendment.<sup>27</sup> Further, s. 119.15(7), F.S., provides that records created before the date of the repeal of an exemption may not be made public unless otherwise provided by law. This bill does not provide that the confidential and exempt records relating to a victim of certain sexual acts as proscribed in s. 827.071, F.S., will be made publicly available upon repeal of that cross-reference. As such, any records containing such information that were created prior to the repeal of the reference to s. 827.071, F.S., remain confidential and exempt from public records requirements.

The bill provides for repeal of the revised exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

Finally, the bill provides an effective date that is contingent upon the passage of HB 7055 or similar legislation. HB 7055 takes effect on October 1, 2016.

## B. SECTION DIRECTORY:

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<sup>13</sup> Chapter 827, F.S., relates to abuse of children.

<sup>14</sup> Chapter 847, F.S., relates to obscenity.

<sup>15</sup> Section 810.145, F.S., relates to video voyeurism.

<sup>16</sup> Section 119.071(2)(h)1., F.S.

<sup>17</sup> Section 794.011, F.S., relates to sexual battery.

<sup>18</sup> Section 827.071, F.S., relates to sexual performance by a child.

<sup>19</sup> Section 847.012, F.S., relates to harmful materials and sale of distribution to minors or using minors in production prohibited.

<sup>20</sup> Section 847.0125, F.S., relates to retail display of materials harmful to minors prohibited.

<sup>21</sup> Section 847.013, F.S., relates to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

<sup>22</sup> Section 847.0133, F.S., relates to protection of minors and prohibition of certain acts in connection with obscenity.

<sup>23</sup> Section 847.0145, F.S., relates to selling or buying of minors.

<sup>24</sup> In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

<sup>24</sup> There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); *Op. Att'y Gen. Fla. 85-692* (1985).

<sup>25</sup> Section 119.071(2)(j)2.a., F.S.

<sup>26</sup> Section 119.15(7), F.S., provides that records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law.

<sup>27</sup> *See Baker v. Eckerd Corporation*, 697 So.2d 970 (Fla. 2d DCA 1997).

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

Section 3. Provides that the act takes effect on the same date that HB 7055 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

##### Vote Requirement

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

##### Public Necessity Statement

Article I, section 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 public records exemption; therefore, it includes a public necessity statement.

### Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 13, 2016, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment removed from the bill revisions to the public records exemption for certain criminal intelligence and criminal investigative information; thus, maintaining the current public records exemption for victims of certain sexual offenses as proscribed in chapter 827, F.S. The strike-all amendment also revised the public necessity statement to comport with the public records exemption and to strengthen the reasons supporting the expansion of the public records exemption.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.