

Committee Substitute for Senate Bill No. 1618

An act relating to a review under the Open Government Sunset Review Act regarding victims of child abuse or sex crimes; amending s. 119.071, F.S.; expanding the exemption for certain victim information by making it confidential and exempt from public-record requirements; expanding the exemption to include sexual offenses prohibited under chapters 796 and 847, F.S.; creating exceptions to the public record exemption; providing for future legislative review of the exemption; reorganizing the exemption; providing a statement of public necessity; repealing s. 2 of chapter 2003-157, Laws of Florida, which provides for repeal of the exemption; amending s. 92.56, F.S.; requiring that the confidential and exempt status of certain victim information made confidential and exempt s. 119.071(2)(h), F.S., be maintained in court records and court proceedings; providing for a petition for access at the trial court; providing specified criteria for maintaining the confidential and exempt status of such information upon the filing of a petition; permitting a defendant charged with specified offenses to apply for an order of disclosure to prepare a defense; amending s. 119.0714, F.S.; conforming the provisions to changes made in s. 119.071(2)(h), F.S.; amending s. 794.03, F.S.; conforming the provisions to changes made in s. 119.071(2)(h), F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (h) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

~~a. Any criminal intelligence information or criminal investigative information, including the photograph, name, address, or other fact, or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794; the identity of the victim of a lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age, as defined in chapter 800; or the identity of the victim of the crime of child abuse as defined by chapter 827, and~~

~~b. Any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter~~

794, chapter 796, chapter 800, ~~or~~ chapter 827, or chapter 847 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~c.2. In addition to subparagraph 1., 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 a sexual offense prohibited under chapter 794, ~~chapter 796, chapter 800, or~~ chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim, ~~is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt photographs, videotapes, or images held as criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from public-records requirements certain criminal intelligence information or criminal investigative information that reveals the identity of a victim of the crime of child abuse or of any sexual offense. The Legislature also finds that it is a public necessity to make confidential and exempt from public-records requirements a photograph, videotape, or image of any part of the body of a victim of a sexual offense regardless of whether the photograph, videotape, or image identifies the victim. The Legislature finds that it is important to strengthen the protections afforded victims of sexual offenses or child abuse in order to ensure their privacy and to prevent revictimization by making such information confidential and exempt. The identity of victims of child abuse or sexual offenses is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputation of the victims. Protecting the release of identifying information of such victims

protects them from further embarrassment, harassment, or injury. The Legislature further finds that it is a public necessity that criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of a victim of a sexual offense prohibited under chapter 794, chapter 800, chapter 827, or chapter 847, Florida Statutes, be made confidential and exempt from public-records requirements. The Legislature finds that such photographs, videotapes, or images often depict the victim in a graphic and disturbing fashion, frequently nude, bruised, or bloodied. Such highly sensitive photographs, videotapes, or images of a victim of a sexual offense, if viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the victim and the victim's family.

Section 3. Section 2 of chapter 2003-157, Laws of Florida, is repealed.

Section 4. Section 92.56, Florida Statutes, is amended to read:

92.56 Judicial proceedings and court records involving sexual offenses.—

(1)(a) The confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h) must be maintained in court records pursuant to s. 119.0714(1)(h) and in court proceedings, including testimony from witnesses.

(b) If a petition for access to such confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status of such information shall be maintained by the court if the state or the victim demonstrates that: All court records, including testimony from witnesses, that reveal the photograph, name, or address of the victim of an alleged offense described in chapter 794 or chapter 800, or act of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, are confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and may not be made public if, upon a showing to the trial court with jurisdiction over the alleged offense, the state or the victim demonstrates that:

1.(a) The identity of the victim is not already known in the community;

2.(b) The victim has not voluntarily called public attention to the offense;

3.(c) The identity of the victim has not otherwise become a reasonable subject of public concern;

4.(d) The disclosure of the victim's identity would be offensive to a reasonable person; and

5.(e) The disclosure of the victim's identity would:

a.1. Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;

b.2. Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;

- c.3. Cause severe emotional or mental harm to the victim;
- d.4. Make the victim unwilling to testify as a witness; or
- e.5. Be inappropriate for other good cause shown.

(2) ~~A If the court, pursuant to subsection (1), declares that all court records or other information that reveals the photograph, name, or address of the victim are confidential and exempt from s. 24(a), Art. I of the State Constitution, the defendant charged with a the crime described in chapter 794 or chapter 800, or with child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h) or maintained as confidential and exempt pursuant to court order under this section. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information~~ This paragraph may not be construed to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, in all court records and records of court proceedings.

(4) The protection of this section may be waived by the victim of the alleged offense in a writing filed with the court, in which the victim consents to the use or release of identifying information during court proceedings and in the records of court proceedings.

(5) This section does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for an offense described in chapter 794 or chapter 800, or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in chapter 827, but the publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has consented in writing to the publication and filed such consent with the court or unless the court has declared such records not confidential and exempt as provided for in subsection (1).

(6) A willful and knowing violation of this section or a willful and knowing failure to obey any court order issued under this section constitutes contempt.

Section 5. Paragraph (h) of subsection (1) of section 119.0714, Florida Statutes, is amended to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(h) Criminal intelligence information or criminal investigative information that is confidential and exempt information or records that may reveal the identity of a person who is a victim of a sexual offense as provided in s. 119.071(2)(h).

Section 6. Section 794.03, Florida Statutes, is amended to read:

794.03 Unlawful to publish or broadcast information identifying sexual offense victim.—No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter, except as provided in s. 119.071(2)(h) or unless the court determines that such information is no longer confidential and exempt pursuant to s. 92.56. Such identifying information is confidential and exempt from the provisions of s. 119.07(1). An offense under this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. This act shall take effect October 1, 2008.

Approved by the Governor June 30, 2008.

Filed in Office Secretary of State June 30, 2008.