

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1019 (PCB SA 03-02) Public Records Exemption/Videotaped Statements/Minors
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1026

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts the public records exemption for identifying information contained in a videotaped statement of a minor, which will repeal on October 2, 2003, if this bill does not become law. The current public records exemption fails to identify which agency or agencies are affected by the exemption, however, only law enforcement agencies and Department of Health child protection teams are responsible for videotaping such minor's statement. This bill makes the exemption only apply to law enforcement agencies because the Department of Health child protection teams already have an agency specific exemption for such minor's videotaped statement.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1019.sa.doc
DATE: March 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Law enforcement agencies and Department of Health child protection teams videotape the statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct.

Florida law provides a public records exemption for any information gained through such a videotaped statement that would identify the minor. The exemption further reiterates that the minor's identifying information is confidential and exempt from public disclosure.¹ This reiteration is superfluous because the exemption already makes such identifying information confidential and exempt from public disclosure.

The public records exemption fails to identify which agency or agencies are affected by the exemption. Accordingly, the exemption could be construed to apply to all agencies, however, only law enforcement agencies and Department of Health child protection teams are known to be responsible for videotaping such minor's statement. Although, the Department of Health child protection teams already have an agency specific exemption for such videotaped statements.²

Furthermore, any governmental agency authorized to have access to the videotaped statements must be granted such access in the furtherance of the receiving agency's statutory duties (*i.e.*, prosecutors, guardian ad litem, probation officers, and the Department of Children and Family Services). The receiving agency must maintain the confidential and exempt status of such statement.

Any person who violates the provisions of the public records exemption commits a misdemeanor of the first degree.³

Current law provides for future review and repeal of the public records exemption for identifying information contained in a videotaped statement of a minor. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 119.07(3)(s)2., F.S., will repeal on October 2, 2003, unless otherwise

¹ There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

² Section 39.202(5), F.S.

³ Penalties for a misdemeanor of the first degree include a definite term of imprisonment not to exceed 60 days [s. 775.082(4)(a), F.S.] and a fine not to exceed \$1,000 [s. 775.083(1)(d), F.S.].

reenacted by the Legislature. Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to FDLE, DCFS, and DOH regarding the public records exemption for videotaped statements of minors. As a result of those questionnaire responses, this bill reenacts the exemption under review with certain changes.

Effect of Bill

This bill:

1. Reenacts, with editorial changes, the public records exemption for identifying information contained in a videotaped statement of a minor.
2. Removes superfluous language.
3. Designates law enforcement agencies as the custodian of such statements.
4. Removes the sentence that requires repeal of the public records exemption.

C. SECTION DIRECTORY:

Section 1. Amends ss. 119.07(3)(s)2., 3., and 4., regarding a public records exemption for videotaped statements of minors, adds clarifying language and removes the review and repeal language.

Section 2. Provides that the act shall take effect October 1, 2003.

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.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995⁴ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting 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; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on State Administration adopted a technical amendment at the January 21, 2003, meeting.

⁴ Section 119.15, F.S.