

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7065 PCB CRJS 15-03 Pub. Rec./Child Pornography

**SPONSOR(S):** Criminal Justice Subcommittee; Spano and Kerner

**TIED BILLS:** CS/HB 7063 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Government Operations Subcommittee	10 Y, 0 N	Williamson	Williamson
2) Judiciary Committee	18 Y, 0 N	Cunningham	Havlicak

### SUMMARY ANALYSIS

Current law provides a public record exemption for the following criminal intelligence information and criminal investigative information:

- Information which may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794, 796, 800, 827, or 847, F.S.;
- Photographs, videotapes, or images of any part of the body of the victim of a sexual offenses prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145, F.S., regardless of whether it identifies the victim; and
- 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.

CS/HB 7063, which is tied to this bill, repeals s. 827.071, F.S., which relates to sexual performance by a child, and moves its provisions to ss. 847.003, and 847.0137, F.S.

This bill amends the above-described public records exemptions 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 CS/HB 7063.

This bill provides for repeal of the reenacted exemptions on October 2, 2020, unless they are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings, court records, and the unlawful disclosure of identifying information to incorporate the changes made by the bill.

**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 record or public meeting exemption. The bill expands a public record 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 which 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.;

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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> s. 119.15, F.S.

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

<sup>6</sup> s. 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" means 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.

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

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

- Photographs, videotapes, or images of any part of the body of the victim of a sexual offenses 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; and
- 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>16</sup> 827.071,<sup>17</sup> 847.012,<sup>18</sup> 847.0125,<sup>19</sup> 847.013,<sup>20</sup> 847.0133,<sup>21</sup> or 847.0145,<sup>22</sup> F.S.<sup>23</sup>

Current law also requires the confidential and exempt status of criminal investigative information and criminal intelligence information to 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>24</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>25</sup>

### **CS/HB 7063**

CS/HB 7063, which is tied to this bill, repeals s. 827.071, F.S., which relates to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S.

### **Effect of the Bill**

The bill amends the above-described public records exemptions 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 CS/HB 7063.

The bill provides for repeal of the reenacted exemptions on October 2, 2020, unless they are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings, court records, and the unlawful disclosure of identifying information to incorporate the changes made by the bill.

## **B. SECTION DIRECTORY:**

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. Reenacts s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses and human trafficking.

Section 4. Reenacts s. 119.0714, F.S., relating to court files; court records; official records.

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

<sup>16</sup> Section 794.011, F.S., relates to sexual battery.

<sup>17</sup> Section 827.071, F.S., relates to sexual performance by a child.

<sup>18</sup> Section 847.012, F.S., relates to harmful materials and sale of distribution to minors or using minors in production prohibited.

<sup>19</sup> Section 847.0125, F.S., relates to retail display of materials harmful to minors prohibited.

<sup>20</sup> Section 847.013, F.S., relates to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

<sup>21</sup> Section 847.0133, F.S., relates to protection of minors and prohibition of certain acts in connection with obscenity.

<sup>22</sup> Section 847.0145, F.S. relates to selling or buying of minors.

<sup>23</sup> s. 119.071(2)(h)2. and (j)2.a., F.S.

<sup>24</sup> s. 92.56, F.S.

<sup>25</sup> s. 119.0714(1)(h), 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.

Section 5. Reenacts s. 794.024, F.S., relating to unlawful to disclose identifying information.

Section 6. Provides an effective date to be the same as that of House Bill 7063 or similar legislation, 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 record or public meeting exemption. The bill expands a public record 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 record or public meeting exemption. The bill expands a public record 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 record or public meeting 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 the 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**

None.