

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1026

SPONSOR: Committee on Criminal Justice

SUBJECT: Public Records Exemption/Videotaped Statement of a Minor

DATE: January 10, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>                    </u>	<u>                    </u>	<u>GO</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

Section 119.07(3)(s)2., F.S., makes confidential and exempt from public access information in a videotaped statement of a minor who is the victim of certain sexual offenses that identifies such victim. This public records exemption is subject to repeal on October 2, 2003, pursuant to s. 119.15, F.S., the Open Government Sunset Review Act of 1995, unless the Legislature reenacts the exemption.

Senate Bill 1026 reenacts and amends the public records exemption in s. 119.07(3)(s), F.S. The amendments clarify who are the custodians of the videotaped statement (law enforcement agencies), the governmental entities that may receive such statement and the responsibility of the governmental entities to maintain the confidential and exempt status of information contained in such statement that identifies the victim. The amendments also remove surplus verbiage in the exemption. These amendments are in accord with staff's findings and recommendations in its 2002 interim report on the exemption.

This bill substantially reenacts and amends s. 119.07(3)(s), F.S.

## II. Present Situation:

### A. Public Records Exemption for Videotaped Statement of a Minor who is a Sexual Assault Victim

Section 119.07(3)(s)2., F.S., provides:

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 chapter 800

or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145, which reveals that minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, is confidential and exempt from subsection (1) and s. 24(a), Art. I of the State Constitution. Any governmental agency that is authorized to have access to such statements by any provision of law shall be granted such access in the furtherance of the agency's statutory duties, notwithstanding the provisions of this section. This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2003.

The public records exemption was created by s. 1, ch. 98-9, L.O.F. (effective April 11, 1998). This chapter, in subsection (3)(s) of 119.07, F.S., designated subparagraph 1. and added subparagraph 2. Section 2 of ch. 98-9, L.O.F., provided the following legislative findings in support of the exemption:

The Legislature finds that there is a public necessity to protect minors who are victims of sexual crimes from having exposed to the public videotaped statements that contain the minor's statements regarding sexual abuse or misconduct perpetrated against them. This protection is necessary to enable the state to prosecute effectively and efficiently persons who commit such crimes and at the same time to minimize the trauma to the minor victims and the inhibitions that will result if the minors, or their guardians, are fearful that such videotapes can be released for public consumption during or after any court proceedings. If such videotapes were subject to release, the state's ability to prosecute sexual crimes and abuse involving minor victims would be significantly impaired. The identity of minors who are victims of sexual abuse or sexual crimes is information of a sensitive personal nature. The release of such information by the release of videotaped statements given by these minors would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputations of the minors. Accordingly, such information requires the protection of this exemption.

#### B. Constitutional Access to Public Records and Meetings

Section 24(a), Art. I of the State Constitution provides every person with "... the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution."

Section 24 specifically includes "... the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution." *Id.*

Section 24(c), Art. I of the State Constitution authorizes the Legislature to statutorily exempt "... records from the requirements of subsection (a) ... , provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." A law creating a records exemption only exempts requirements relating to public records and only relates to one subject.

### C. Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review-and-repeal process for exemptions to requirements relating to public records or public meetings. A new exemption, or substantial amendment of an existing exemption, is repealed on October 2nd of the fifth year after enactment of the exemption, unless the Legislature acts to reenact the exemption. "A law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date." Section 119.15(3)(a), F.S.

"... [A]n exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption." Section 119.15(3)(b), F.S.

By June 1st of the year before repeal of an exemption, the Division of Statutory Revision of the Office of Legislative Services is required to "... certify to the President of the Senate and the Speaker of the House of Representatives ... the language and statutory citation of each exemption scheduled for repeal the following year which meets the criteria of an exemption as defined in [s. 119.15, F.S]." Section 119.15(3)(d), F.S. If the exemption is not identified and certified by the Division, it is not subject to legislative review and repeal. In the event "... the [D]ivision fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination." *Id.*

Section 119.15(2)(a) - (c), F.S., provides that an exemption is to be created or maintained only for the following reasons:

- (a) The exempted record ... is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Section 119.15(4)(a)1. - 4., F.S., requires that the following specific questions be considered as part of the open government sunset review process:

- (1) What specific records ... are affected by the exemption?
- (2) Whom does the exemption uniquely affect, as opposed to the general public?
- (3) What is the identifiable public purpose or goal of the exemption?

- (4) Can the information contained in the records ... be readily obtained by alternative means?  
If so, how?

Section 119.15(4)(b), F.S., provides that “[a]n exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves.” (This provision codifies the identical requirements in s. 24(c), Art. I of the State Constitution.) An identifiable public purpose is served if: 1) the exemption meets one of the purposes described in s. 119.15(4)(b)1. – 3., F.S.; and 2) “... the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption....” *Id.* The following purposes are described in s. 119.15(4)(b)1. – 3., F.S:

- (1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. (However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted); or
- (3) Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Section 119.15(4)(e), F.S., provides that, “[n]otwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.”

D. Committee Staff’s Interim Report Recommending Reenactment and Amendment of s. 119.07(3)(s)2., F.S.

In December of 2002, the Florida Senate released an interim report by staff, which contained its findings and recommendations in support of reenacting and amending s. 119.07(3)(s)2., F.S. *Open Government Sunset Review of the Public Records Exemption for Taped Video Statements of Minors (s. 119.07(3)(s)2., F.S.)*, Senate Committee on Criminal Justice (Interim Project Report 2003-213) (December 2002). Findings for staff’s report were based on responses to survey questionnaires prepared by staff, as well as responses to survey questionnaires prepared by staff of the House Committee on State Administration. Responses to those questionnaires were received from the Florida Prosecuting Attorneys Association, the Florida Police Chiefs Association, the Florida Department of Law Enforcement and the Florida Department of Children and Family Services.

Based on the information provided by the respondents, staff submitted the following findings:

The records exemption in s. 119.07(3)(s)2., F.S., meets the statutory criteria in s. 119.15(2), F.S. (and almost identical criteria in s. 119.15(4), F.S.) for its reenactment.

The exempted information --the videotaped statement of the minor sexual victim-- is of a "... sensitive, personal nature, concerning individuals." Section 119.15(2)(a) and (4)(b)2., F.S. Public disclosure of this information could defame the minor; cause unwarranted damage to the good name or reputation of the minor; and possibly jeopardize the minor's safety.

The exemption is also "... necessary for the effective and efficient administration of a governmental program...." Sections 119.15(2)(b) and (4)(b)1., F.S. Without the exemption minor victims of sexual assaults might not cooperate with investigators, and there could be a 'chilling' effect on prosecution.

There is no indication that these purposes can be accomplished without the exemption.

The exemption is no broader than is necessary to meet the public purposes it serves. The information exempted is limited to information in the videotaped statement that identifies the minor sexual victim.

Based on these findings, it appears that the benefits of retaining the exemption far outweigh any remote benefits that might accrue as a result of its repeal. However, based on the survey responses, it appears that, in addition to reenacting the exemption, it would be beneficial to have a technical, clarifying amendment of the exemption. It is apparent that, with regard to this exemption, the custodian of records are law enforcement agencies. This could be stated. There may also be some uncertainty as to the extent of disclosure to governmental entities and their responsibility to maintain the confidential and exempt status of the videotaped statements. This can be clarified by adding boilerplate language from other exemptions. Finally, there appears to be surplus verbiage in the exemption that restates that the information in the videotaped statement of the minor is limited to information identifying the minor victim. This restatement can be removed.

Based on staff's findings, the following recommendations were submitted:

Staff recommends that the exemption in s. 119.07(3)(s)2., F.S., be reenacted because it meets the criteria in s. 119.15, F.S., for its reenactment. However, staff also recommends a technical, clarifying amendment to clearly indicate who is the custodian of the videotaped statement and when and in what manner disclosure of information is authorized to governmental entities, and to remove surplus verbiage.

### **III. Effect of Proposed Changes:**

Section 119.07(3)(s)2., F.S., makes confidential and exempt from public access information in a videotaped statement of a minor who is the victim of certain sexual offenses that identifies such victim. This public records exemption is subject to repeal on October 2, 2003, pursuant to s. 119.15, F.S., the Open Government Sunset Review Act of 1995, unless the Legislature reenacts the exemption.

Senate Bill 1026 reenacts and amends the public records exemption in s. 119.07(3)(s), F.S. Three amendments are made to the exemption.

The first amendment specifies that the custodians of the videotaped statement of the minor are law enforcement agencies (this statement simply reflects what is already fact; law enforcement agencies already act as such custodians).

The second amendment adds boilerplate language from other exemptions to clarify which governmental entities may receive the videotaped statement and the responsibility of those governmental entities receiving such statement to maintain the confidential and exempt status of information contained in the statement that identifies the victim. Specifically, the bill states that “[s]uch videotaped statement may be disclosed to another governmental entity if disclosure is necessary for that entity to perform its duties and responsibilities. The receiving governmental entity must maintain the confidential and exempt status of the minor’s identifying information contained in the videotaped statement.”

The third amendment removes surplus verbiage. Presently, the exemption restates that the information in the videotaped statement that is made confidential and exempt by the exemption is limited to information identifying the victim. The amendment deletes this restatement, which is surplus language.

The reenactment and amendment of the public records exemption in s. 119.07(3)(s)2., F.S., accords with the findings and recommendation of staff in its 2002 interim report on the exemption. (See “Present Situation” section of this analysis.)

The act takes effect October 1, 2003.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

There are no public records issues. The public records exemption in s. 119.07(3)(s)2., F.S., meets the criteria in s. 119.15, F.S., the Open Government Sunset Review Act of 1995, for the exemption’s reenactment. (See “Present Situation” section of this analysis.)

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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