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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act regarding victims of child abuse or sex
 4 crimes; amending s. 119.071, F.S.; expanding the exemption
 5 for certain victim information by making it confidential
 6 and exempt from public records requirements; expanding the
 7 exemption to include sexual offenses prohibited under
 8 chapters 796 and 847, F.S.; creating exceptions to the
 9 public record exemption; providing for future legislative
 10 review of the exemption; reorganizing the exemption;
 11 providing a statement of public necessity; repealing s. 2
 12 of chapter 2003-157, Laws of Florida, which provides for
 13 repeal of the exemption; amending s. 92.56, F.S.;
 14 requiring that the confidential and exempt status of
 15 certain victim information made confidential and exempt
 16 pursuant to s. 119.071(2)(h), F.S., be maintained in court
 17 records and court proceedings; providing for a petition
 18 for access at the trial court; providing specified
 19 criteria for maintaining the confidential and exempt
 20 status of such information upon the filing of a petition;
 21 permitting a defendant charged with specified offenses to
 22 apply for an order of disclosure to prepare a defense;
 23 amending s. 119.0714, F.S.; conforming the provisions to
 24 changes made in s. 119.071(2)(h), F.S.; amending s.
 25 794.03, F.S.; conforming the provisions to changes made in
 26 s. 119.071(2)(h), F.S.; providing an effective date.

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

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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.~~

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56 c.2. ~~In addition to subparagraph 1., any criminal~~
 57 ~~intelligence information or criminal investigative information~~
 58 ~~that is~~ A photograph, videotape, or image of any part of the
 59 body of the victim of a sexual offense prohibited under chapter
 60 794, chapter 796, chapter 800, ~~or~~ chapter 827, or chapter 847,
 61 regardless of whether the photograph, videotape, or image
 62 identifies the victim, ~~is confidential and exempt from s.~~
 63 ~~119.07(1) and s. 24(a), Art. I of the State Constitution.~~

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

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

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

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

81 4. This paragraph is subject to the Open Government Sunset
 82 Review Act in accordance with s. 119.15, and shall stand

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83 repealed on October 2, 2013, unless reviewed and saved from
 84 repeal through reenactment by the Legislature.

85 Section 2. The Legislature finds that it is a public
 86 necessity to make confidential and exempt from public records
 87 requirements certain criminal intelligence information or
 88 criminal investigative information that reveals the identity of
 89 a victim of the crime of child abuse or of any sexual offense.
 90 The Legislature also finds that it is a public necessity to make
 91 confidential and exempt from public records requirements a
 92 photograph, videotape, or image of any part of the body of a
 93 victim of a sexual offense regardless of whether the photograph,
 94 videotape, or image identifies the victim. The Legislature finds
 95 that it is important to strengthen the protections afforded
 96 victims of sexual offenses or child abuse in order to ensure
 97 their privacy and to prevent revictimization by making such
 98 information confidential and exempt. The identity of victims of
 99 child abuse or sexual offenses is information of a sensitive
 100 personal nature. As such, this exemption serves to minimize the
 101 trauma to victims because the release of such information would
 102 compound the tragedy already visited upon their lives and would
 103 be defamatory to or cause unwarranted damage to the good name or
 104 reputation of the victims. Protecting the release of identifying
 105 information of such victims protects them from further
 106 embarrassment, harassment, or injury. The Legislature further
 107 finds that it is a public necessity that criminal intelligence
 108 information or criminal investigative information that is a
 109 photograph, videotape, or image of any part of the body of a
 110 victim of a sexual offense prohibited under chapter 794, chapter

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111 800, chapter 827, or chapter 847, Florida Statutes, be made
 112 confidential and exempt from public records requirements. The
 113 Legislature finds that such photographs, videotapes, or images
 114 often depict the victim in a graphic and disturbing fashion,
 115 frequently nude, bruised, or bloodied. Such highly sensitive
 116 photographs, videotapes, or images of a victim of a sexual
 117 offense, if viewed, copied, or publicized, could result in
 118 trauma, sorrow, humiliation, or emotional injury to the victim
 119 and the victim's family.

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

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

124 92.56 Judicial proceedings and court records involving
 125 sexual offenses.--

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

131 (b) If a petition for access to such confidential and
 132 exempt records is filed with the trial court having jurisdiction
 133 over the alleged offense, the confidential and exempt status of
 134 such information shall be maintained by the court if the state
 135 or the victim demonstrates that: ~~All court records, including~~
 136 ~~testimony from witnesses, that reveal the photograph, name, or~~
 137 ~~address of the victim of an alleged offense described in chapter~~
 138 ~~794 or chapter 800, or act of child abuse, aggravated child~~

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139 ~~abuse, or sexual performance by a child as described in chapter~~
 140 ~~827, are confidential and exempt from the provisions of s.~~
 141 ~~24(a), Art. I of the State Constitution and may not be made~~
 142 ~~public if, upon a showing to the trial court with jurisdiction~~
 143 ~~over the alleged offense, the state or the victim demonstrates~~
 144 ~~that:~~

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

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

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

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

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

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

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

158 c.3. Cause severe emotional or mental harm to the victim;

159 d.4. Make the victim unwilling to testify as a witness; or

160 e.5. Be inappropriate for other good cause shown.

161 (2) A ~~If the court, pursuant to subsection (1), declares~~
 162 ~~that all court records or other information that reveals the~~
 163 ~~photograph, name, or address of the victim are confidential and~~
 164 ~~exempt from s. 24(a), Art. I of the State Constitution, the~~
 165 defendant charged with a ~~the~~ crime described in chapter 794 or
 166 chapter 800, or with child abuse, aggravated child abuse, or

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167 sexual performance by a child as described in chapter 827, may
 168 apply to the trial court for an order of disclosure of
 169 information in court records held confidential and exempt
 170 pursuant to s. 119.0714(1)(h) or maintained as confidential and
 171 exempt pursuant to court order under this section. Such
 172 identifying information concerning the victim may be released to
 173 the defendant or his or her attorney in order to prepare the
 174 defense. The confidential and exempt status of this information
 175 ~~This paragraph~~ may not be construed to prevent the disclosure of
 176 the victim's identity to the defendant; however, the defendant
 177 may not disclose the victim's identity to any person other than
 178 the defendant's attorney or any other person directly involved
 179 in the preparation of the defense. A willful and knowing
 180 disclosure of the identity of the victim to any other person by
 181 the defendant constitutes contempt.

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

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

192 (5) This section does not prohibit the publication or
 193 broadcast of the substance of trial testimony in a prosecution
 194 for an offense described in chapter 794 or chapter 800, or a

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195 | crime of child abuse, aggravated child abuse, or sexual
 196 | performance by a child, as described in chapter 827, but the
 197 | publication or broadcast may not include an identifying
 198 | photograph, an identifiable voice, or the name or address of the
 199 | victim, unless the victim has consented in writing to the
 200 | publication and filed such consent with the court or unless the
 201 | court has declared such records not confidential and exempt as
 202 | provided for in subsection (1).

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

206 | Section 5. Paragraph (h) of subsection (1) of section
 207 | 119.0714, Florida Statutes, is amended to read:

208 | 119.0714 Court files; court records; official records.--

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

213 | (h) Criminal intelligence information or criminal
 214 | investigative information that is confidential and exempt
 215 | ~~information or records that may reveal the identity of a person~~
 216 | ~~who is a victim of a sexual offense~~ as provided in s.
 217 | 119.071(2)(h).

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

220 | 794.03 Unlawful to publish or broadcast information
 221 | identifying sexual offense victim.--No person shall print,
 222 | publish, or broadcast, or cause or allow to be printed,

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223 | published, or broadcast, in any instrument of mass communication
 224 | the name, address, or other identifying fact or information of
 225 | the victim of any sexual offense within this chapter, except as
 226 | provided in s. 119.071(2)(h) or unless the court determines that
 227 | such information is no longer confidential and exempt pursuant
 228 | to s. 92.56. ~~Such identifying information is confidential and~~
 229 | ~~exempt from the provisions of s. 119.07(1).~~ An offense under
 230 | this section shall constitute a misdemeanor of the second
 231 | degree, punishable as provided in s. 775.082 or s. 775.083.

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