

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJ 18-02 Public Records/Minor Victims of Sexual Offenses  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** PCB CRJ 18-01 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Bruno	Sumner

### SUMMARY ANALYSIS

Florida law provides a public records exemption for 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.

PCB CRJ 18-01, which is tied to this PCB, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S.

PCB CRJ 18-02 amends the public records exemption for the videotaped statement of a minor 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 provisions of PCB CRJ 18-02. The PCB provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement for the exemption as required by the Florida Constitution.

The PCB does not appear to have a fiscal impact on state or local governments.

The PCB takes effect on the same date that PCB CRJ 18-01 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. PCB CRJ 18-01 provides an effective date of October 1, 2018.

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 records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for final passage.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

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 for the exemption of records from the requirements of Article I, section 24(a), by general law,<sup>1</sup> which 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> (the Act) 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 that reveals the identity of the victim of child abuse or that reveals the identity of a victim of human trafficking who is under the age of 18;
- Information that 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.; and

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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" as 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> Relating to sexual battery.

<sup>11</sup> Relating to prostitution.

- Photographs, videotapes, or images of any part of the body of the victim of a sexual offense 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.<sup>16</sup>

Current law also provides that 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 ch. 800, F.S., or ss. 794.011,<sup>17</sup> 827.071,<sup>18</sup> 847.012,<sup>19</sup> 847.0125,<sup>20</sup> 847.013,<sup>21</sup> 847.0133,<sup>22</sup> or 847.0145,<sup>23</sup> F.S., is confidential and exempt<sup>24</sup> from public records requirements.<sup>25</sup>

### PCB CRJ 18-01

PCB CRJ 18-01, which is tied to this bill, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S. PCB CRJ 18-01 takes effect October 1, 2018.

### **Effect of Proposed Changes**

PCB CRJ 18-02 amends the public records exemption of 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 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 PCB CRJ 18-01.

Florida's Second District Court of Appeal has held that an amendment eliminating a public records exemption applies prospectively from the effective date of the amendment.<sup>27</sup> Further, s. 119.15(7), F.S., provides that records created before the date of the repeal of an exemption may not be made public unless otherwise provided by law. This bill does not provide that the confidential and exempt records relating to a victim of certain sexual acts as proscribed in s. 827.071, F.S., will be made publicly available upon repeal of that cross-reference. As such, any records containing such information that were created prior to the repeal of the reference to s. 827.071, F.S., remain confidential and exempt from public records requirements.

The PCB provides for repeal of the revised exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement for the exemption as required by the Florida Constitution.

<sup>12</sup> Relating to lewdness and indecent exposure.

<sup>13</sup> Relating to abuse of children.

<sup>14</sup> Relating to obscenity.

<sup>15</sup> Relating to video voyeurism.

<sup>16</sup> S. 119.071(2)(h)1., F.S.

<sup>17</sup> Relating to sexual battery.

<sup>18</sup> Relating to sexual performance by a child.

<sup>19</sup> Relating to harmful materials and sale of distribution to minors or using minors in production prohibited.

<sup>20</sup> Relating to retail display of materials harmful to minors prohibited.

<sup>21</sup> Relating to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

<sup>22</sup> Relating to protection of minors and prohibition of certain acts in connection with obscenity.

<sup>23</sup> Relating to selling or buying of minors.

<sup>24</sup> In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

<sup>24</sup> There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

<sup>25</sup> S. 119.071(2)(j)2.a., 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.

<sup>27</sup> *Baker v. Eckerd Corporation*, 697 So.2d 970 (Fla. 2d DCA 1997).

Finally, the PCB provides an effective date that is contingent upon the passage of PCB CRJ 18-01 or similar legislation. PCB CRJ 18-01 provides an effective date of October 1, 2018.

**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:** Provides that the act takes effect on the same date that PCB CRJ 18-01 or similar legislation takes effect, 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:

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. 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 records or public meetings exemption. The bill expands the current public records 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 records or public meetings exemption. The bill expands the current public records 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 records or public meetings 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 an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**