

By Senator Stewart

13-01538C-18

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1                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       406.135, F.S.; revising the definition of the term  
4       "medical examiner"; providing that a legal guardian  
5       shall have access, under certain circumstances, to a  
6       photograph or video or audio recording of an autopsy  
7       held by a medical examiner; providing that a legal  
8       guardian shall be given reasonable notice of, a copy  
9       of, and reasonable notice of an opportunity to be  
10      present and heard at any hearing on a petition to view  
11      or make a copy of such photograph or recording under  
12      certain circumstances; providing an exemption from  
13      public records requirements for a specified time after  
14      the date of death or after a certain notification  
15      occurs for an autopsy report or a related written  
16      record held by a medical examiner which personally  
17      identifies the deceased; providing for future  
18      legislative review and repeal of the exemption;  
19      providing criminal penalties for any custodian of an  
20      autopsy report or a certain record who willfully and  
21      knowingly violates specified provisions; providing  
22      retroactive applicability; providing a statement of  
23      public necessity; providing an effective date.

24  
25   Be It Enacted by the Legislature of the State of Florida:

26  
27       Section 1. Subsections (1), (2), and (5) of section  
28       406.135, Florida Statutes, are amended, present subsections (6)  
29       through (8) of that section are redesignated as (7) through (9),

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30 respectively, present subsections (6) and (8) are amended, and a  
31 new subsection (6) is added to that section, to read:

32 406.135 Autopsies; confidentiality of reports, related  
33 written records, photographs, and video and audio recordings;  
34 exemption.—

35 (1) For the purpose of this section, the term “medical  
36 examiner” means any district medical examiner, associate medical  
37 examiner, or substitute medical examiner acting pursuant to this  
38 chapter, as well as any employee, deputy, or agent of a medical  
39 examiner or any other person who may obtain possession of an  
40 autopsy report or a related written record that personally  
41 identifies the deceased, or a photograph or audio or video  
42 recording of an autopsy, in the course of assisting a medical  
43 examiner in the performance of his or her official duties.

44 (2) A photograph or video or audio recording of an autopsy  
45 held by a medical examiner is confidential and exempt from s.  
46 119.07(1) and s. 24(a), Art. I of the State Constitution, except  
47 that a surviving spouse may view and copy a photograph or video  
48 recording or listen to or copy an audio recording of the  
49 deceased spouse’s autopsy. If there is no surviving spouse, ~~then~~  
50 the surviving parents or legal guardians shall have access to  
51 such records. If there is no surviving spouse, ~~or~~ parent, or  
52 legal guardian, then an adult child shall have access to such  
53 records.

54 (5) A surviving spouse shall be given reasonable notice of  
55 a petition filed with the court to view or copy a photograph or  
56 video recording of an autopsy or a petition to listen to or copy  
57 an audio recording, a copy of such petition, and reasonable  
58 notice of the opportunity to be present and heard at any hearing

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59 on the matter. If there is no surviving spouse, ~~then~~ such notice  
60 must be given to the parents or legal guardians of the deceased,  
61 and if the deceased has no surviving living parent or legal  
62 guardian, ~~then~~ to the adult children of the deceased.

63 (6) (a) An autopsy report or a related written record that  
64 personally identifies the deceased and that is held by a medical  
65 examiner is confidential and exempt from s. 119.07(1) and s.  
66 24(a), Art. I of the State Constitution for the earlier of 10  
67 days after the date of death or immediately after law  
68 enforcement notifies a surviving spouse, parent, legal guardian,  
69 or adult child of the deceased of any request to obtain the  
70 autopsy report, written record, or name of the deceased person.

71 (b) The exemption in paragraph (a) is subject to the Open  
72 Government Sunset Review Act in accordance with s. 119.15 and  
73 shall stand repealed on October 2, 2023, unless reviewed and  
74 saved from repeal through reenactment by the Legislature.

75 (7) (a) ~~(6) (a)~~ Any custodian of an autopsy report or a  
76 related written record that personally identifies the deceased,  
77 or a photograph or video or audio recording of an autopsy, who  
78 willfully and knowingly violates this section commits a felony  
79 of the third degree, punishable as provided in s. 775.082, s.  
80 775.083, or s. 775.084.

81 (b) Any person who willfully and knowingly violates a court  
82 order issued pursuant to this section commits a felony of the  
83 third degree, punishable as provided in s. 775.082, s. 775.083,  
84 or s. 775.084.

85 (9) ~~(8)~~ This exemption applies to records held before, on,  
86 or after the effective date of this act ~~shall be given~~  
87 ~~retroactive application.~~

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88           Section 2. The Legislature finds that it is a public  
89 necessity that autopsy reports and related written records that  
90 personally identify the deceased be made confidential and exempt  
91 from the requirements of s. 119.07(1), Florida Statutes, and s.  
92 24(a), Article I of the State Constitution for 10 days after the  
93 date of death or until the family has been notified by law  
94 enforcement. The Legislature finds that the deceased's family  
95 may unexpectedly encounter new information obtained from an  
96 autopsy report or related written record regarding the death of  
97 a loved one which is published or conveyed by word of mouth,  
98 causing the family to experience trauma, sorrow, humiliation, or  
99 emotional injury. The Legislature finds that, although access  
100 delayed is access denied, the deceased's family should be given  
101 a reasonable time to be notified before any highly sensitive  
102 autopsy report or related written record that personally  
103 identifies the deceased is released to the public. The  
104 Legislature further finds that the exemption provided in this  
105 act should be given retroactive application because it is  
106 remedial in nature.

107           Section 3. This act shall take effect upon becoming a law.