

ENROLLED  
 HB 7115

2006 Legislature

1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act regarding autopsy photographs and video  
 4           and audio recordings; amending s. 406.135, F.S., which  
 5           provides an exemption from public records requirements for  
 6           photographs and video and audio recordings of an autopsy  
 7           in the custody of a medical examiner; reorganizing the  
 8           section and making editorial changes; removing the  
 9           scheduled repeal of the exemption; providing an effective  
 10          date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Section 406.135, Florida Statutes, is amended  
 15 to read:

16           406.135 Autopsies; confidentiality of photographs and  
 17 video and audio recordings; exemption.--

18           (1) For the purpose of this section, the term "medical  
 19 examiner" means any district medical examiner, associate medical  
 20 examiner, or substitute medical examiner acting pursuant to this  
 21 chapter, as well as any employee, deputy, or agent of a medical  
 22 examiner or any other person who may obtain possession of a  
 23 photograph or audio or video recording of an autopsy in the  
 24 course of assisting a medical examiner in the performance of his  
 25 or her official duties.

26           (2) A photograph or video or audio recording of an autopsy  
 27 held by ~~in the custody of~~ a medical examiner is confidential and  
 28 exempt from ~~the requirements of~~ s. 119.07(1) and s. 24(a), Art.

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29 I of the State Constitution, except that a surviving spouse may  
30 view and copy a photograph or video recording or listen to or  
31 copy an audio recording of the deceased spouse's autopsy. If  
32 there is no surviving spouse, then the surviving parents shall  
33 have access to such records. If there is no surviving spouse or  
34 parent, then an adult child shall have access to such records.

35 (3) (a) ~~However,~~ The deceased's surviving relative, with  
36 whom authority rests to obtain such records, may designate in  
37 writing an agent to obtain such records.

38 (b) A local governmental entity, or a state or federal  
39 agency, in furtherance of its official duties, pursuant to a  
40 written request, may view or copy a photograph or video  
41 recording or may listen to or copy an audio recording of an  
42 autopsy, and unless otherwise required in the performance of  
43 their duties, the identity of the deceased shall remain  
44 confidential and exempt.

45 (c) The custodian of the record, or his or her designee,  
46 may not permit any other person, except an agent designated in  
47 writing by the deceased's surviving relative with whom authority  
48 rests to obtain such records, to view or copy such photograph or  
49 video recording or listen to or copy an audio recording without  
50 a court order. ~~For the purposes of this section, the term~~  
51 ~~"medical examiner" means any district medical examiner,~~  
52 ~~associate medical examiner, or substitute medical examiner~~  
53 ~~acting pursuant to this chapter, as well as any employee,~~  
54 ~~deputy, or agent of a medical examiner or any other person who~~  
55 ~~may obtain possession of a photograph or audio or video~~

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56 ~~recording of an autopsy in the course of assisting a medical~~  
57 ~~examiner in the performance of his or her official duties.~~

58 (4)~~(2)~~(a) The court, upon a showing of good cause, may  
59 issue an order authorizing any person to view or copy a  
60 photograph or video recording of an autopsy or to listen to or  
61 copy an audio recording of an autopsy and may prescribe any  
62 restrictions or stipulations that the court deems appropriate.

63 (b) In determining good cause, the court shall consider  
64 whether such disclosure is necessary for the public evaluation  
65 of governmental performance; the seriousness of the intrusion  
66 into the family's right to privacy and whether such disclosure  
67 is the least intrusive means available; and the availability of  
68 similar information in other public records, regardless of form.

69 (c) In all cases, the viewing, copying, listening to or  
70 other handling of a photograph or video or audio recording of an  
71 autopsy must be under the direct supervision of the custodian of  
72 the record or his or her designee.

73 (5)~~(b)~~ A surviving spouse shall be given reasonable notice  
74 of a petition filed with the court to view or copy a photograph  
75 or video recording of an autopsy or a petition to listen to or  
76 copy an audio recording, a copy of such petition, and reasonable  
77 notice of the opportunity to be present and heard at any hearing  
78 on the matter. If there is no surviving spouse, then such notice  
79 must be given to the parents of the deceased ~~deceased's parents~~,  
80 and if the deceased has no living parent, then to the adult  
81 children of the deceased.

82 (6)~~(3)~~(a) Any custodian of a photograph or video or audio  
83 recording of an autopsy who willfully and knowingly violates

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84 this section commits a felony of the third degree, punishable as  
85 provided in s. 775.082, s. 775.083, or s. 775.084.

86 (b) Any person who willfully and knowingly violates a  
87 court order issued pursuant to this section commits a felony of  
88 the third degree, punishable as provided in s. 775.082, s.  
89 775.083, or s. 775.084.

90 (7)~~(e)~~ A criminal or administrative proceeding is exempt  
91 from this section, but unless otherwise exempted, is subject to  
92 all other provisions of chapter 119, provided however that this  
93 section does not prohibit a court in a criminal or  
94 administrative proceeding upon good cause shown from restricting  
95 or otherwise controlling the disclosure of an autopsy, crime  
96 scene, or similar photograph or video or audio recordings in the  
97 manner prescribed herein.

98 (8)~~(4)~~ This exemption shall be given retroactive  
99 application.

100 ~~(5) The exemption in this section is subject to the Open~~  
101 ~~Government Sunset Review Act of 1995 in accordance with s.~~  
102 ~~119.15, and shall stand repealed on October 2, 2006, unless~~  
103 ~~reviewed and saved from repeal through reenactment by the~~  
104 ~~Legislature.~~

105 Section 2. This act shall take effect October 1, 2006.