

By the Committee on Health Policy; and Senator Stewart

588-02613-18

20181850c1

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 medical examiner has completed the autopsy report;  
15      providing for future legislative review and repeal of  
16      the exemption; providing criminal penalties for any  
17      custodian of an autopsy report or a certain record who  
18      willfully and knowingly violates specified provisions;  
19      providing retroactive applicability; providing a  
20      statement of public necessity; providing an effective  
21      date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25       Section 1. Subsections (1), (2), and (5) of section  
26       406.135, Florida Statutes, are amended, present subsections (6)  
27       through (8) of that section are redesignated as (7) through (9),  
28       respectively, present subsections (6) and (8) are amended, and a  
29       new subsection (6) is added to that section, to read:

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30 406.135 Autopsies; confidentiality of reports, related  
31 written records, photographs, and video and audio recordings;  
32 exemption.—

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

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

52 (5) A surviving spouse shall be given reasonable notice of  
53 a petition filed with the court to view or copy a photograph or  
54 video recording of an autopsy or a petition to listen to or copy  
55 an audio recording, a copy of such petition, and reasonable  
56 notice of the opportunity to be present and heard at any hearing  
57 on the matter. If there is no surviving spouse, ~~then~~ such notice  
58 must be given to the parents or legal guardians of the deceased,

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59 and if the deceased has no surviving living parent or legal  
60 guardian, then to the adult children of the deceased.

61 (6) (a) An autopsy report or a related written record that  
62 personally identifies the deceased and that is held by a medical  
63 examiner is confidential and exempt from s. 119.07(1) and s.  
64 24(a), Art. I of the State Constitution for 10 days after the  
65 medical examiner has completed the report, except that a  
66 surviving spouse may view and copy the records. If there is no  
67 surviving spouse, the surviving parents or legal guardians shall  
68 have access to such records. If there is no surviving spouse,  
69 parent, or legal guardian, an adult child shall have access to  
70 such records.

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 medical examiner has completed the report. The Legislature finds  
94 that the deceased's family may unexpectedly encounter new  
95 information obtained from an autopsy report or related written  
96 record regarding the death of a loved one which is published or  
97 conveyed by word of mouth, causing the family to experience  
98 trauma, sorrow, humiliation, or emotional injury. The  
99 Legislature finds that, although access delayed is access  
100 denied, the deceased's family should be given a reasonable time  
101 to be notified before any highly sensitive autopsy report or  
102 related written record that personally identifies the deceased  
103 is released to the public. The Legislature further finds that  
104 the exemption provided in this act should be given retroactive  
105 application because it is remedial in nature.

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