

By Senator Martin

33-01108-23

20231402\_\_

1                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       119.071, F.S.; defining terms; providing an exemption  
4       from public records requirements for investigative  
5       genetic genealogy materials; authorizing the  
6       disclosure of investigative genetic genealogy  
7       materials under specified circumstances; providing for  
8       retroactive application; providing for future  
9       legislative review and repeal of the exemption;  
10      providing a statement of public necessity; providing  
11      an effective date.

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

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15       Section 1. Paragraph (r) is added to subsection (2) of  
16      section 119.071, Florida Statutes, to read:

17       119.071 General exemptions from inspection or copying of  
18      public records.—

19       (2) AGENCY INVESTIGATIONS.—

20       (r)1. As used in this paragraph, the term:

21       a. "Genetic genealogy" is the application of genetics to  
22      genealogy wherein DNA testing is combined with traditional  
23      genealogical methods to infer relationships between individuals  
24      and determine ancestry.

25       b. "Investigative genetic genealogy" means the application  
26      of genetic genealogy and law enforcement investigative  
27      techniques to develop investigative leads in unsolved violent  
28      crimes and provide investigative leads as to the identity of  
29      unidentified human remains and living unidentified missing

33-01108-23

20231402\_\_

30 persons. A single nucleotide polymorphism or whole genome  
31 sequencing DNA profile is developed from an unknown DNA profile  
32 from a crime scene or unidentified human remains and then  
33 uploaded into a web-based genealogy database. Genealogy  
34 databases are used to detect possible genetic relationships with  
35 distant relatives.

36 c. "Investigative genetic genealogy materials" means the  
37 information, records, and genetic profiles created or collected  
38 by or on behalf of a law enforcement agency conducting  
39 investigative genetic genealogy research. This includes any  
40 names and personal identifying information or identifiers of  
41 individuals determined through the use of genealogy databases,  
42 traditional genealogical methods, or other investigative means.  
43 The term does not include:

44 (I) The identity or personal identifying information of the  
45 donor of a biological sample attributable to a perpetrator, with  
46 the exception of the single nucleotide polymorphism or whole  
47 genome sequencing DNA profile developed from the crime scene  
48 evidence; or

49 (II) Any individual identified through investigative  
50 genetic genealogy who is a witness to or has personal knowledge  
51 related to the crime under investigation, with the exception of  
52 the individual's single nucleotide polymorphism or whole genome  
53 sequencing DNA profile.

54 d. "Single nucleotide polymorphism" is a variation in a  
55 single unit in a DNA sequence. Profiles consisting of single  
56 nucleotide polymorphism data from various locations in a genome  
57 are made up of letters representing the building blocks of DNA  
58 (A, T, G, and C). However, depending on the locations tested,

33-01108-23

20231402\_\_

59 single nucleotide polymorphism data may also reveal information  
60 on physical characteristics, disease predisposition, and  
61 susceptibility to environmental factors such as toxins or drugs.

62 e. "Traditional genealogical methods" means the use of  
63 genealogical databases and historical records to trace the  
64 family lineage of an individual.

65 f. "Whole genome sequencing" means the attempt to determine  
66 the genetic code using A, T, G, and C for an individual  
67 throughout the entire complement of DNA, including all genes.  
68 Whole genome sequencing data represents the entirety of an  
69 individual's DNA and the traits, health, and ancestry  
70 information it contains.

71 2. Investigative genetic genealogy materials, including a  
72 single nucleotide polymorphism or a whole genome sequencing  
73 profile, are confidential and exempt from s. 119.07(1) and s.  
74 24(a), Art. I of the State Constitution.

75 3. Notwithstanding subparagraph 2., investigative genetic  
76 genealogy materials, including a single nucleotide polymorphism  
77 or whole genome sequencing profile, or a portion thereof, may be  
78 disclosed by a law enforcement agency:

79 a. In furtherance of its official duties and  
80 responsibilities; or

81 b. To another governmental agency in the furtherance of its  
82 official duties and responsibilities.

83 4. Notwithstanding subparagraph 2., investigative genetic  
84 genealogy materials, including a single nucleotide polymorphism  
85 or whole genome sequencing profile, or a portion thereof, must  
86 be disclosed pursuant to a court order in furtherance of a  
87 criminal prosecution. If a court orders that investigative

33-01108-23

20231402\_\_

88 genetic genealogy materials be disclosed, the recipient of the  
89 records or information must maintain the confidentiality of  
90 those records or information and may only disclose them publicly  
91 as needed for purposes of a criminal prosecution, as determined  
92 by the court.

93 5. The exemption in subparagraph 2. must be given  
94 retroactive application and must apply to all investigative  
95 genetic genealogy materials, including a single nucleotide  
96 polymorphism or whole genome sequencing profile, or a portion  
97 thereof, held in the possession of an agency before, on, or  
98 after July 1, 2023.

99 6. This paragraph is subject to the Open Government Sunset  
100 Review Act in accordance with s. 119.15 and shall stand repealed  
101 on October 2, 2028, unless reviewed and saved from repeal  
102 through reenactment by the Legislature.

103 Section 2. The Legislature finds that it is a public  
104 necessity that investigative genetic genealogy materials be made  
105 confidential and exempt from s. 119.07(1), Florida Statutes, and  
106 s. 24(a), Article I of the State Constitution. Investigative  
107 genetic genealogy is an advanced investigative tool that uses  
108 law enforcement agency investigative resources and traditional  
109 genealogical research in collaboration with crime laboratories,  
110 private vendor laboratories, and companies or organizations that  
111 provide genealogy services and information to the public.  
112 Investigative genetic genealogy allows law enforcement agencies  
113 to generate an investigative lead on an unknown perpetrator. The  
114 investigative lead aids law enforcement agencies in determining  
115 potential donors of crime scene samples, which can be confirmed  
116 or refuted by a crime laboratory for use in legal proceedings.

33-01108-23

20231402\_\_

117 Convictions and exonerations have been aided by the use of  
118 investigative genetic genealogy. The same techniques are also  
119 used in missing persons and unidentified human remains cases.  
120 Investigative genetic genealogy is a valuable tool to solve  
121 violent crimes and to hold accountable perpetrators who may  
122 otherwise roam freely and undetected in society. Traditional  
123 forensic DNA testing attempts to identify the possible donor of  
124 a crime scene sample through matches in law enforcement  
125 agencies' DNA databases that consist of short tandem repeat DNA  
126 databases. The use of investigative genetic genealogy differs  
127 from traditional law enforcement agency investigative techniques  
128 because it uses advanced DNA testing to develop a single  
129 nucleotide polymorphism or a whole genome sequencing profile  
130 from the unknown crime scene DNA, which is then uploaded into a  
131 public genealogy database and used to locate personal  
132 identifying information for possible relatives and ancestors who  
133 participate in the databases. Individuals whose names, contact  
134 information, or other family associations are available in these  
135 databases may, and routinely, have no association with or  
136 knowledge of the perpetrator or the crime that a law enforcement  
137 agency is investigating. The first publicized use of  
138 investigative genetic genealogy involved the Golden State Killer  
139 cases in California. The publicity surrounding law enforcement  
140 agencies' use of genetic genealogy led individuals, genealogy  
141 service providers, genealogical testing companies, and privacy  
142 advocates and ethicists to express privacy concerns. Private  
143 companies have since strictly limited or precluded law  
144 enforcement agency access to genetic genealogy databases due to  
145 fear that individuals who are biologically related to a

33-01108-23

20231402\_\_

146 perpetrator but unassociated with the crime may be identified,  
147 harassed, and even victimized. Law enforcement agency use of  
148 investigative genetic genealogy materials has been restricted to  
149 violent crimes and unidentified human remains, and companies  
150 employ opt-in features for customers. Failure to properly  
151 protect and limit the disclosure of investigative genetic  
152 genealogy materials will hinder law enforcement agencies'  
153 ability to use this valuable method to solve violent crimes and  
154 provide closure to the family members of victims of these  
155 heinous acts. Often, unidentified human remains are homicide  
156 victims, so protection of investigative genetic genealogy tools  
157 and information is equally important in giving names to these  
158 decedents as well as to their perpetrators. For the foregoing  
159 reasons, the Legislature finds that it is a public necessity  
160 that investigative genetic genealogy materials be made  
161 confidential and exempt from public records requirements and  
162 that such exemption be applied retroactively.

163       Section 3. This act shall take effect July 1, 2023.