

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 404

INTRODUCER: Committee on Rules and Senator Perry

SUBJECT: Public Records/Deaths of Minors

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tusznyski</u>	<u>Cox</u>	<u>CF</u>	Favorable
2.	<u>Limones-Borja</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Tusznyski</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

I. Summary:

CS/SB 404 makes confidential and exempt from public disclosure the photographs or video or audio recordings that depict the killing of a minor when held by an agency. The bill defines the “killing of a minor” and specifies who may obtain such photographs and recordings and specifies the process for obtaining these materials. The bill provides for retroactive application of the exemption.

The bill amends s. 119.071(2)(p), F.S., to conform to the expanded exemption for photographs or video or audio recordings that depict the killing of a minor. Specifically:

- Certain government entities’ may access such photographs or video or audio recordings in furtherance of their official duties;
- The court, upon showing of good cause, may issue an order authorizing any person to view or copy such photographs or video or audio recordings;
- The record custodian in control of photographs or video or audio recordings, or his or her designee, must directly supervise anyone who views, copies, or handles such;
- Any surviving parent must be given reasonable notice of petition to view or copy the photographs or video or audio recordings, a copy of the petition, and reasonable notice of the opportunity to be heard at any hearing; and
- Any custodian of photographs or video or audio recordings that depict the killing of a minor who willfully and knowingly violates the provisions in the section and any person who violates a court order issued pursuant to the section, commits a third degree felony.

The exemption created for photographs or video or audio recordings that depict the killing of a minor must be given retroactive application.

The bill also creates the “Rex and Brody Act” and makes confidential and exempt from public inspection and copying requirements an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner. The bill allows for disclosure of the report

to the surviving parent who did not commit the act of domestic violence. The bill provides for retroactive application of the exemption.

The bill conforms several provisions in s. 406.135, F.S., to incorporate the expanded exemption for autopsy reports of certain minors. Specifically:

- Certain government entities' may access such reports in furtherance of their official duties;
- The custodian of the record, or his or her designee, may not permit any other person, except an authorized designed agent, to view or copy an autopsy report of a minor;
- A court may use its discretion to authorize the disclosure of such reports;
- Reasonable notice of a petition to view such reports must be given to certain surviving parents; they must also receive a copy of the petition to view or copy such reports; and
- Any person who willfully and knowingly violates a court order regarding the disclosure of these reports, and any custodian who willfully and knowingly discloses these reports in violation of the law, are subject to a third degree felony.

The term "minor" is defined to mean a person younger than 18 years of age who has not had the disability of nonage removed.

The bill makes findings that the new exemptions from public records disclosure for photographs or video or audio recordings that depict the killing of a minor and for an autopsy report of a minor whose death was related to an act of domestic violence are a public necessity as required by the Florida Constitution. Two-thirds vote of both the House and the Senate is required for final passage.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

There is no anticipated fiscal impact on state or local governments.

The bill is effective upon becoming law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S.,

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary. An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁹
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁰ or
- It protects trade or business secrets.²¹

The Act also requires specified questions to be considered during the review process.²² In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁴

Exemptions related to Sensitive Photos, or Videos of Deaths

Autopsy Photographs, Videos, or Audio Depictions

Section 406.135, F.S., makes confidential and exempt a photograph, video, or audio recording of an autopsy held by a medical examiner. It does not limit the disclosure of any written autopsy report. There is an exception which allows for a surviving spouse to view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse's autopsy.²⁵ If there is no surviving spouse, current law provides that the surviving parent must have access to such records.²⁶ If there is no surviving spouse and no surviving parent, then an adult child is required to have access to such records.²⁷ Current law also allows for the disclosure to a local, state, or federal agency if it is in furtherance of its official duties.²⁸

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²³ See generally s. 119.15, F.S.

²⁴ Section 119.15(7), F.S.

²⁵ Section 406.135(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 406.135(3)(b), F.S.

The custodian of the record, or his or her designee, may not allow any other person to view or copy such records unless the deceased's surviving relative who has authority to request such records designated, or his or her designated agent, grants permission to view or copy such records.²⁹

Upon a showing of good cause, a court may issue an order authorizing any person to view or copy a photograph or video recording, or listen to, or copy any audio recording of an autopsy.³⁰ The court may impose any restrictions or stipulations that it deems appropriate.³¹ The court must consider three factors when determining whether good cause exists, including:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records.³²

Any handling of photographs, videos, or audio recordings of an autopsy must be under the direct supervision of the custodian of record or his or her designee.³³

The surviving spouse, surviving parent, or adult children of the deceased, as appropriate, must be given:

- Reasonable notice of a petition filed with the court to view or copy a photograph or video recording, or listen to or copy an audio recording of an autopsy;
- A copy of such petition; and
- Reasonable notice of the opportunity to be present and heard at any hearing.³⁴

A custodian of a photograph, video, or audio recording of an autopsy who willfully and knowingly violates these provisions commits a felony of the third degree.³⁵ Any person who willfully and knowingly violates a court order issued after showing good cause to view or copy a photograph or video, or listen to or copy an audio recording of an autopsy commits a felony of the third degree.³⁶

A criminal or administrative proceeding is exempt from s. 406.135, F.S., and is subject to all the provisions of ch. 119, F.S., unless otherwise exempted.³⁷ A court in a criminal or administrative proceeding, however, may, upon a showing of good cause, restrict or otherwise control the disclosure of an autopsy, crime scene, or similar photograph, video, or audio recording.³⁸

²⁹ Section 406.135(3)(c), F.S.

³⁰ Section 406.135(4)(a), F.S.

³¹ *Id.*

³² Section 406.135(4)(b), F.S.

³³ Section 406.135(5)(c), F.S.

³⁴ Section 406.135(5), F.S.

³⁵ Section 406.135(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

³⁶ Section 406.135(6)(b), F.S.

³⁷ Section 406.135(7), F.S.

³⁸ *Id.*

The exemption under s. 406.135, F.S. is given retroactive application.³⁹ There is no provision under current law which makes confidential and exempt autopsy reports of any person that are held by a medical examiner, including autopsy reports of a minor whose death was related to an act of domestic violence.⁴⁰

Killing of a Law Enforcement Officer and Mass Killings

Section 119.071(2)(p), F.S., makes a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her

³⁹ Section 406.135(8), F.S.

⁴⁰ Section 741.28(2), F.S. defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family member or household member. A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. Section 784.011(1), F.S., defines “assault” as intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Section 784.021(1), F.S., defines “aggravated assault” as an assault: (a) with a deadly weapon without the intent to kill; or (b) with an intent to commit a felony. Section 784.03(1)(a), F.S., states that the offense of battery occurs when a person: 1. Actually and intentionally touches or strikes another person against the will of the other; or 2. Intentionally causes bodily harm to another person. Section 784.045(1)(a), F.S., states a person commits aggravated battery who, in committing battery: 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or 2. Uses a deadly weapon. Section 794.011(1)(h), F.S., defines “sexual battery” as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Section 748.048(2), F.S., states a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking. Section 784.048(3), F.S., states that a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking. Section 784.048(1)(a), F.S., states that “harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. Section 784.048(1)(c), F.S., defines “credible threat” as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. Section 784.048(1)(d), F.S., states “cyberstalk” means: 1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or 2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission. Section 784.048(1)(b), F.S., defines “course of conduct” as a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. Section 787.01(1)(a), F.S., defines “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to: 1. Hold for ransom or reward or as a shield or hostage; 2. Commit or facilitate commission of any felony; 3. Inflict bodily harm upon or to terrorize the victim or another person; or 4. Interfere with the performance of any governmental or political function. Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

official duties⁴¹ or the killing of a victim of mass violence⁴² confidential and exempt from public records requirements.⁴³ Similar to the above described public records exemption related to autopsies, a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, the surviving parents must have access to such records, and if there is no surviving spouse or parent then the adult children must have access to such records.⁴⁴

Additionally, access may be provided to the photograph or video or audio recordings by a court in the same circumstances as described above for autopsies.⁴⁵

As with the exemption related to autopsies, this exemption applies retroactively and to all photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, regardless of whether the killing of the person occurred before, on, or after May 23, 2019.⁴⁶

There is currently no exemption for photographs or video or audio recordings related to the killing of a minor, to mean the killing of a victim who has not yet reached the age of eighteen years at the time of death, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of the death, events that depict the victim being killed, or events that depict the body of the victim who has been killed.

Reinhart Case

On May 4, 2021, law enforcement began searching for Paul Reinhart and his two sons, Rex and Brody, as part of a wellness check that was requested by a family member after Mr. Reinhart posted a series of “cryptic” Facebook updates and sent family members “concerning” text messages. Authorities later found them dead inside Mr. Reinhart’s second home in Dixie County that was in flames when they arrived on scene.⁴⁷ News stations obtained a copy of the children’s

⁴¹ Section 119.071(2)(p)1.a., F.S., defines “killing of a law enforcement officer who was acting in accordance with his or her official duties” to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

⁴² Section 119.071(2)(p)1.b., F.S., defines “killing of a victim of mass violence” to mean events that depict either a victim being killed or the body of a victim killed in an incident in which three or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence.

⁴³ Section 119.071(2)(p)1.b., F.S., defines “killing of a victim of mass violence” as events that depict either a victim being killed or the body of a victim killed in an incident in which three or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence.

⁴⁴ Section 119.071(2)(p)2., F.S.

⁴⁵ See s. 119.071(2)(p)4.-6., F.S.

⁴⁶ Section 119.071(2)(p)7., F.S. However, the provision further states that it is not intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any Florida court, as of the effective date of the act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence.

⁴⁷ Syed, Camille, Autopsy Report Shows Rex and Brody Reinhart Were Shot by Father, 20WCJB, Aug. 31, 2021, available at <https://www.wcjb.com/2021/08/31/autopsy-report-shows-rex-brody-reinhart-were-shot-by-father/>; Swirko, Cindy, Paul Reinhart shot his two sons and then himself, autopsies conclude, Gainesville Sun, August 31, 2021, available at

autopsy reports. Several outlets published some of its findings in August 2021 after the surviving mother had expressed to such outlets that she did not want to know the nature of her children's deaths and requested the news stations not to publish the information contained in them.⁴⁸

Tristyn Bailey Case

In the early morning hours of May 9, 2021, 13-year-old Tristyn Bailey was murdered by a 14-year-old classmate.⁴⁹ The murder was particularly brutal as Tristyn was stabbed more than 100 times.⁵⁰ The teenage boy last seen with Tristyn was arrested and charged with her murder the morning of May 10, 2021.⁵¹ He subsequently admitted to killing Tristyn and pleaded guilty to first-degree murder, sentencing proceedings began on March 21, 2023.⁵²

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(2), F.S., to make a photograph or video or audio recording that depicts the killing of a minor confidential and exempt from public disclosure when held by an agency.

The section defines “killing of a minor” to mean the killing of a victim who has not yet reached the age of eighteen years at the time of death, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of the death, events that depict the victim being killed, or events that depict the body of the victim who has been killed.

The section amends s. 119.071(2)(p), F.S., to conform to the expanded exemption for photographs or video or audio recordings that depict the killing of a minor. Specifically:

- Certain government entities' may access such photographs or video or audio recordings in furtherance of their official duties;
- The court, upon showing of good cause, may issue an order authorizing any person to view or copy such photographs or video or audio recordings;
- The record custodian in control of photographs or video or audio recordings, or his or her designee, must directly supervise anyone who views, copies, or handles such;

<https://www.gainesville.com/story/news/2021/08/31/paul-reinhart-shot-sons-and-then-himself-autopsiesconclude/5668557001/>; Weber, Thomas, Dad Suspected of Killing 2 Sons, Including UF Bat Boy, Burning Home, and Killing Himself, WJCT News (May 4, 2021), available at <https://news.wjct.org/state-news/2021-05-04/dad-suspected-of-killing-2-sons-including-uf-bat-boy-burning-home-and-killing-himself> (all sites last visited March 9, 2023).

⁴⁸ *Id.*

⁴⁹ See News 4 JAX, *Tristyn Bailey: The murder that sent shockwaves through St. Johns County*, February 6, 2023, available at <https://www.news4jax.com/news/local/2023/02/06/tristyn-bailey-the-murder-that-sent-shockwaves-through-st-johns-county/> (last viewed March 22, 2023); USA Today, *Sentencing begins for Aiden Fucci, 16, who stabbed 13-year-old Tristyn Bailey 114 times*, March 21, 2023, available at <https://www.usatoday.com/story/news/nation/2023/03/21/aiden-fucci-sentencing-hearing-tristyn-bailey-stabbing/11516860002/> (last viewed March 22, 2023).

⁵⁰ *Id.*

⁵¹ See News 4 JAX, *Teenage boy accused of killing Tristyn Bailey*, May 10, 2021, available at <https://www.news4jax.com/news/florida/2021/05/10/teenage-boy-arrested-in-death-of-tristyn-bailey/> (last viewed March 22, 2023).

⁵² See USA Today, *Sentencing begins for Aiden Fucci, 16, who stabbed 13-year-old Tristyn Bailey 114 times*, March 21, 2023, available at <https://www.usatoday.com/story/news/nation/2023/03/21/aiden-fucci-sentencing-hearing-tristyn-bailey-stabbing/11516860002/> (last viewed March 22, 2023).

- Any surviving parent must be given reasonable notice of petition to view or copy the photographs or video or audio recordings, a copy of the petition, and reasonable notice of the opportunity to be heard at any hearing; and
- Any custodian of photographs or video or audio recordings that depict the killing of a minor who willfully and knowingly violates the provisions in the section and any person who violates a court order issued pursuant to the section, commits a third degree felony.

The exemption created by the bill must be given retroactive application.

The bill provides for repeal of the exemption on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates the “Rex and Brody Act.”

Section 3 amends s. 406.135, F.S., to make confidential and exempt public records copying and inspection requirements an autopsy report of a minor whose death was related to an act of domestic violence that is held by a medical examiner. The section provides for the disclosure to the surviving parent who did not commit the act of domestic violence that led to the minor’s death to view and copy the report.

The section amends s. 406.135, F.S., to conform to the expanded exemption for autopsy reports of a minor whose death was related to an act of domestic violence. Specifically:

- Certain government entities’ may access such reports in furtherance of their official duties;
- The custodian of the record, or his or her designee, may not permit any other person, except an authorized designed agent, to view or copy an autopsy report of a minor;
- The court may, upon a showing of good cause, issue an order authorizing any person to view or copy an autopsy report of a minor;
- The record custodian in control of an autopsy report of a minor, or his or her designee, must directly supervise anyone who views, copies, or handles the autopsy report;
- Any surviving parent who did not commit the act of domestic violence which led to the minor’s death must be given reasonable notice of petition to view or copy the autopsy report, a copy of the petition, and reasonable notice of the opportunity to be heard at any hearing; and
- Any custodian of an autopsy report of a minor who willfully and knowingly violates the provisions in s. 406.135, F.S., and any person who violates a court order issued pursuant to s. 406.135, F.S., commits a third degree felony.

As used in s. 406.135, F.S., a “medical examiner” is anyone who serves the role of a district medical examiner, as well as any employee, deputy, or agent of the medical examiner, or any other person who may obtain possession of a photograph, or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties. The bill amends “medical examiner” to include possession of a *report* of an autopsy. The bill also defines the term “minor” as a person younger than 18 years of age who has not had the disability of nonage removed pursuant to s. 743.01, F.S., or s. 743.015, F.S.

The exemption created by the bill must be given retroactive application.

The bill provides for repeal of the exemption on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4 provides a statement of public necessity as required by the Florida Constitution. The public necessity statement provides that if the photographs, video and audio recordings, and autopsy reports are released it could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and also the deceased minor's friends. The graphic and disturbing nature of these materials could also result in injury to the memory of the deceased.

Section 5 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for autopsy reports of a minor whose death was related to an act of domestic violence held by a medical examiner, thus, the bill will require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Scope of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect a surviving parent of a deceased minor whose death was related to an act of domestic violence. This bill exempts only those autopsy reports of minors whose death was caused by domestic violence. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill (lines 52-58) makes confidential and exempt only an autopsy report of a minor whose death is related to an act of domestic violence. However, the bill (lines 70-75) prohibits a custodian of the record from allowing any autopsy of a minor to be viewed or copied. The bill should be amended to clarify the custodian's duty to the confidential and exempt autopsy reports.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.135 of the Florida Statutes,

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on March 22, 2023:

The committee substitute:

- Expands the public records exemption in s. 119.071, F.S., making the photographs or video or audio recordings that depict the killing of a minor confidential and exempt

from public disclosure when held by an agency, and applies the exemption retroactively.

- Defines “killing of a minor” and specifies who may obtain such photographs and recordings and specifies the process for obtaining these materials.
- Provides a statement of public necessity as required by the State Constitution and provides that the expansion of this exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

B. Amendments:

None.