

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Johnson and Miller offered the following:

Substitute Amendment for Amendment (874155) (with title amendment)

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. (1)(a) A photograph or video or audio recording of an autopsy in the custody of a medical examiner is confidential and exempt from the requirements of s. 119.07(1), and s. 24(a), Art. I of the State Constitution, except as otherwise provided herein. A medical examiner is defined to mean a district medical examiner, associate medical examiner, substitute medical examiner, as well as an employee, deputy, or agent of a medical examiner.

(b) A surviving spouse may view or copy a photograph or video recording or may listen to or copy an audio recording of the deceased spouse's autopsy. If there is no surviving spouse, then the surviving parents may have access to such records. If there is no surviving spouse or parent, then an adult child may have access to such records.

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1 (c) A local governmental entity, or a state or federal
2 agency, in furtherance of its official duties, pursuant to a
3 written request, may view or copy a photograph or video
4 recording or may listen to or copy an audio recording of an
5 autopsy, and unless otherwise required in the performance of
6 their duties, the identity of the deceased shall remain
7 confidential and exempt.

8 (d) The medical examiner, in his or her official
9 capacity, may use the photographs or video or audio recordings
10 of an autopsy for the purposes of seeking another expert
11 medical opinion, for providing professional training, for
12 case-related medical research, or for other purposes solely
13 related to the accomplishment of the medical examiner's duties
14 and responsibilities. However, the identity of the deceased
15 shall remain confidential and exempt.

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17 The custodian of the record, or his or her designee, may not
18 permit any other person to view or copy such photograph or
19 video recording, or to listen to or copy such audio recording
20 without a court order.

21 (2)(a) The court, upon a showing of good cause, may
22 issue an order authorizing any person to view or copy a
23 photograph or video recording of an autopsy, or to listen to
24 or copy an audio recording of an autopsy and may prescribe any
25 restrictions or stipulations that the court deems appropriate.

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27 In determining good cause, the court shall consider:

28 1. Whether such disclosure is necessary for the public
29 evaluation of governmental performance;

30 2. The seriousness of the intrusion into the family's
31 right to privacy and whether such disclosure is the least

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1 intrusive means available; and

2 3. The availability of similar information in other
3 public records, regardless of form.

4
5 In all cases, the viewing, copying, listening to, or other
6 handling of a photograph or video or audio recording of an
7 autopsy must be under the direct supervision of the custodian
8 of the record or his or her designee.

9 (b) A surviving spouse shall be given reasonable
10 notice of a petition, filed with the court, to view or copy a
11 photograph or video recording of an autopsy or a petition to
12 listen to or copy an audio recording of an autopsy, a copy of
13 such petition, and reasonable notice of the opportunity to be
14 present and heard at any hearing on the matter. If there is
15 no surviving spouse, then such notice must be given to the
16 deceased's parents, and if the deceased has no living parent,
17 then to the adult children of the deceased.

18 (3)(a) Any custodian of a photograph or video or audio
19 recording of an autopsy who willfully or knowingly violates
20 this section commits a felony of the third degree, punishable
21 as provided in ss. 775.082, 775.083, or 775.084.

22 (b) Any person who willfully or knowingly violates a
23 court order issued pursuant to this section commits a felony
24 of the third degree, punishable as provided in ss. 775.082,
25 775.083, or 775.084.

26 (4) This exemption shall be given retroactive
27 application.

28 (5) This exemption is subject to the Open Government
29 Sunset Review Act of 1995 in accordance with s. 119.15, and
30 shall stand repealed on October 2, 2006, unless reviewed and
31 saved from repeal through reenactment by the Legislature.

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1 Section 2. The Legislature finds that it is a public
2 necessity that photographs or audio or video recordings of an
3 autopsy be held confidential and exempt. The Legislature finds
4 that photographs and video and audio recordings of an autopsy
5 are highly sensitive, graphic depictions or descriptions of
6 the deceased, which if viewed, heard, copied, or publicized,
7 could result in trauma, sorrow, humiliation, or emotional
8 injury to the immediate family of the deceased, and is an
9 invasion of that family's privacy, as well as injurious to the
10 memories of the deceased. Furthermore, the legislature finds
11 that the existence of the World Wide Web and the proliferation
12 of personal computers throughout the world encourages and
13 promotes the worldwide dissemination of photographs or video
14 or audio recordings, and that widespread dissemination of
15 autopsy photographs or video or audio recordings would subject
16 the immediate family of the deceased to continuous injury.
17 The Legislature further finds that there are other types of
18 available information, such as the autopsy report, which is
19 less intrusive and injurious to the immediate family of the
20 deceased but which continues to provide for public oversight.
21 Furthermore, the Legislature finds that it is a public
22 necessity that the exemption provided in this act be given
23 retroactive application because it is remedial in nature.

24 Section 3. This act shall take effect upon becoming a
25 law and shall apply to all autopsy photographs and video and
26 audio recordings in the custody of a medical examiner, whether
27 made before or after the effective date of this act.

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30 ===== T I T L E A M E N D M E N T =====
31 And the title is amended as follows:

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1 On page 1, lines 3 through 8,
2 remove from the title of the bill: all of said lines
3
4 and insert in lieu thereof:
5 exemption from the public records requirements
6 for photographs and video and audio recordings
7 of an autopsy; providing a definition of
8 medical examiner; providing for exceptions to
9 the exemption; providing for petitioning the
10 court for access to such records and notice
11 requirements; establishing "good cause"
12 considerations; establishing requirements for
13 the custodian of such records; providing
14 penalties; providing for future legislative
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