

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Johnson and Miller offered the following:

13 **Substitute Amendment for Amendment (874155) (with title**  
14 **amendment)**

15 Remove from the bill: Everything after the enacting clause  
16  
17 and insert in lieu thereof:

18 Section 1. (1) A photograph or video or audio  
19 recording of an autopsy in the custody of a medical examiner  
20 is confidential and exempt from the requirements of section  
21 119.07(1) and s. 24(a), Art. I of the State Constitution,  
22 except that a surviving spouse may view and copy a photograph  
23 or video or listen to or copy an audio recording of the  
24 deceased spouse's autopsy. If there is no surviving spouse,  
25 then the surviving parents shall have access to such records.  
26 If there is no surviving spouse or parent, then an adult child  
27 shall have access to such records. A local governmental  
28 entity, or a state or federal agency, in furtherance of its  
29 official duties, pursuant to a written request, may view or  
30 copy a photograph or video or may listen to or copy an audio  
31 recording of an autopsy, and unless otherwise required in the

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1 performance of their duties, the identity of the deceased  
2 shall remain confidential and exempt. The custodian of the  
3 record, or his or her designee, may not permit any other  
4 person to view or copy such photograph or video recording or  
5 listen to or copy an audio recording without a court order.  
6 For the purposes of this section, the term "medical examiner"  
7 means any district medical examiner, associate medical  
8 examiner, or substitute medical examiner acting pursuant to  
9 ch. 406, as well as any employee, deputy, or agent of a  
10 medical examiner or any other person who may obtain possession  
11 of a photograph or audio or video recording of an autopsy in  
12 the course of assisting a medical examiner in the performance  
13 of his or her official duties.

14 (2)(a) The court, upon a showing of good cause, may  
15 issue an order authorizing any person to view or copy a  
16 photograph or video recording of an autopsy or to listen to or  
17 copy an audio recording of an autopsy and may prescribe any  
18 restrictions or stipulations that the court deems appropriate.

19  
20 In determining good cause, the court shall consider whether  
21 such disclosure is necessary for the public evaluation of  
22 governmental performance; the seriousness of the intrusion  
23 into the family's right to privacy and whether such disclosure  
24 is the least intrusive means available; and the availability  
25 of similar information in other public records, regardless of  
26 form. In all cases, the viewing, copying, listening to or  
27 other handling of a photograph or video or audio recording of  
28 an autopsy must be under the direct supervision of the  
29 custodian of the record or his or her designee.

30 (2)(b) A surviving spouse shall be given reasonable  
31 notice of a petition filed with the court to view or copy a

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1 photograph or video recording of an autopsy or a petition to  
2 listen to or copy an audio recording, a copy of such petition,  
3 and reasonable notice of the opportunity to be present and  
4 heard at any hearing on the matter. If there is no surviving  
5 spouse, then such notice must be given to the deceased's  
6 parents, and if the deceased has no living parent, then to the  
7 adult children of the deceased.

8 (3)(a) Any custodian of a photograph or video or audio  
9 recording of an autopsy who willfully and knowingly violates  
10 this section commits a felony of the third degree, punishable  
11 as provided in section 775.082, section 775.083, or section  
12 775.084, Florida Statutes.

13 (b) Any person who willfully and knowingly violates a  
14 court order issued pursuant to this section commits a felony  
15 of the third degree, punishable as provided in section  
16 775.082, section 775.083, or section 775.084, Florida  
17 Statutes.

18 (c) A criminal or administrative proceeding is exempt  
19 from this section, but unless otherwise exempted, is subject  
20 to all other provisions of Chapter 119, Florida Statutes,  
21 provided however that this section does not prohibit a court  
22 in a criminal or administrative proceeding upon good cause  
23 shown from restricting or otherwise controlling the disclosure  
24 of an autopsy, crime-scene, or similar photograph or video or  
25 audio recordings in the manner prescribed herein.

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

28 (5) The exemption in this section is subject to the  
29 Open Government Sunset Review Act of 1995 in accordance with  
30 section 119.15, Florida Statutes, and shall stand repealed on  
31 October 2, 2006, unless reviewed and saved from repeal through

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1 reenactment by the Legislature.  
2       Section 2. The Legislature finds that it is a public  
3 necessity that photographs and video and audio recordings of  
4 an autopsy be made confidential and exempt from the  
5 requirements of section 119.07(1), Florida Statutes, and  
6 Section 24(a) of Article I of the State Constitution. The  
7 Legislature finds that photographs or video or audio  
8 recordings of an autopsy depict or describe the deceased in  
9 graphic and often disturbing fashion. Such photographs or  
10 video or audio recordings may depict or describe the deceased  
11 nude, bruised, bloodied, broken, with bullet or other wounds,  
12 cut open, dismembered, or decapitated. As such, photographs or  
13 video or audio recordings of an autopsy are highly sensitive  
14 depictions or descriptions of the deceased which, if heard,  
15 viewed, copied or publicized, could result in trauma, sorrow,  
16 humiliation, or emotional injury to the immediate family of  
17 the deceased, as well as injury to the memory of the deceased.  
18 The Legislature notes that the existence of the World Wide Web  
19 and the proliferation of personal computers throughout the  
20 world encourages and promotes the wide dissemination of  
21 photographs and video and audio recordings 24 hours a day and  
22 that widespread unauthorized dissemination of autopsy  
23 photographs and video and audio recordings would subject the  
24 immediate family of the deceased to continuous injury. The  
25 Legislature further notes that there continue to be other  
26 types of available information, such as the autopsy report,  
27 which are less intrusive and injurious to the immediate family  
28 members of the deceased and which continue to provide for  
29 public oversight. The Legislature further finds that the  
30 exemption provided in this act should be given retroactive  
31 application because it is remedial in nature.

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1           Section 3. This act shall take effect upon becoming a  
2 law, and shall apply to all photographs or video or audio  
3 recordings of an autopsy, regardless of whether the autopsy  
4 was performed before or after the effective date of the act.

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6  
7 ===== T I T L E   A M E N D M E N T =====

8 And the title is amended as follows:

9           On page 1, lines 2 through 10,  
10 remove from the title of the bill: all of said lines

11  
12 and insert in lieu thereof:

13                   A bill to be entitled

14           An act relating to public records; providing an  
15 exemption from the public records law for  
16 photographs and video and audio recordings of  
17 an autopsy; providing an exemption for certain  
18 members of the immediate family, or a  
19 representative thereof, or a state or federal  
20 agency; prohibiting the custodian of a  
21 photograph or video or audio recording of an  
22 autopsy from permitting any person to view or  
23 duplicate a photograph or video or audio,  
24 except pursuant to court order and under the  
25 direct supervision of the custodian or his or  
26 her designee; exempting criminal and  
27 administrative proceedings from the act;  
28 requiring certain persons to be parties in a  
29 request for access to a photograph or video or  
30 audio recording of an autopsy; providing  
31 penalties; providing for future legislative

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review and repeal; providing a finding of  
public necessity; providing a retroactive  
effective date.