

By the Committee on Criminal Justice and Senators King, Posey, Sebesta, Clary, Peaden, Bronson, Horne, Brown-Waite, Pruitt, Dawson, Burt and Constantine

307-1501A-01

1 A bill to be entitled

2 An act relating to public records; providing an

3 exemption from the public records law for

4 photographs and video and audio recordings of

5 an autopsy; providing an exemption for certain

6 members of the immediate family, or a

7 representative thereof, or a state or federal

8 agency; prohibiting the custodian of a

9 photograph or video or audio recording of an

10 autopsy from permitting any person to view or

11 duplicate a photograph or video or audio,

12 except pursuant to court order and under the

13 direct supervision of the custodian or his or

14 her designee; exempting criminal and

15 administrative proceedings from the act;

16 requiring certain persons to be parties in a

17 request for access to a photograph or video or

18 audio recording of an autopsy; providing

19 penalties; providing for future legislative

20 review and repeal; providing a finding of

21 public necessity; providing a retroactive

22 effective date.

24 Be It Enacted by the Legislature of the State of Florida:

26 Section 1. (1)(a) A photograph or video or audio

27 recording of an autopsy in the custody of a medical examiner

28 is confidential and exempt from the requirements of section

29 119.07(1), Florida Statutes, and Section 24(a) of Article I of

30 the State Constitution, except that a surviving spouse,

31 parent, or child of the deceased, or legal representative

1 thereof, may view, copy, or disseminate a photograph or video
2 or audio recording of the autopsy. In furtherance of its
3 official duties, a state or federal agency may view or copy a
4 photograph or video or audio recording of an autopsy. The
5 custodian of the record or his or her designee may not permit
6 any other person to view or duplicate such photograph or video
7 or audio recording without a court order.

8 (b) The court, upon a showing of good cause, shall
9 issue an order authorizing any other person to:

10 1. View the photograph or video or audio recording of
11 the autopsy, but not to duplicate the record;

12 2. View and duplicate the photograph or video or audio
13 recording, but to maintain the confidentiality of the copied
14 record;

15 3. View, duplicate, or publish a photograph or video
16 or audio recording of an autopsy; or

17 4. Prescribe any other restrictions or stipulations
18 that the court deems appropriate, including, but not limited
19 to, viewing, copying, or publishing only portions of a
20 photograph or video or audio recording deemed relevant to the
21 petition.

22
23 In determining good cause, the court shall consider the
24 relevance of disclosure of the material to furthering public
25 evaluation of governmental accountability; the seriousness of
26 the intrusion into the family's right to privacy by disclosure
27 of the photographs or video or audio recordings; and the
28 availability from other sources, including other public
29 records, of material that is equally relevant to the
30 evaluation of the same government action but is less intrusive
31 of the right of privacy. In all cases, the viewing, copying,

1 or other handling of a photograph or video or audio recording
2 of an autopsy must be under the direct supervision of the
3 custodian of the record or his or her designee.

4 (c) A criminal or administrative proceeding is exempt
5 from this section, but is subject to all other provisions of
6 chapter 119, Florida Statutes; however, this section does not
7 prohibit a court in a criminal proceeding or investigation or
8 administrative proceeding, upon good cause shown, from
9 restricting or otherwise controlling the disclosure of an
10 autopsy or crime-scene photograph or video or audio recordings
11 in the manner prescribed in this section.

12 (d) A surviving spouse, parent, or child of the
13 deceased, or legal representative thereof, must be made a
14 party to any proceeding by a third party requesting to view,
15 duplicate, or publish the photograph or video or audio
16 recording of an autopsy. If the court finds that a family
17 member is indigent and unable to employ counsel to respond to
18 the third-party request, or if the court finds that the
19 interests of justice would best be served, the court may
20 appoint the Attorney General, the local state attorney, or
21 private counsel to represent the interests of the family or to
22 otherwise advise and assist the court.

23 (2)(a) Any custodian of a photograph or video or audio
24 recording of an autopsy who knowingly violates this section
25 commits a felony of the third degree, punishable as provided
26 in section 775.082, section 775.083, or section 775.084,
27 Florida Statutes.

28 (b) Any person who knowingly violates a court order
29 issued pursuant to this section commits a felony of the third
30 degree, punishable as provided in section 775.082, section
31 775.083, or section 775.084, Florida Statutes.

1 (3) The exemption in this section is subject to the
2 Open Government Sunset Review Act of 1995 in accordance with
3 section 119.15, Florida Statutes, and shall stand repealed on
4 October 2, 2006, unless reviewed and saved from repeal through
5 reenactment by the Legislature.

6 Section 2. Given the likelihood of injury to the
7 privacy rights and emotional well-being of immediate family
8 members by the widespread, unauthorized dissemination of
9 photographs or video or audio recordings of an autopsy and the
10 availability of less intrusive means of providing public
11 oversight, the Legislature finds that it is a public necessity
12 that autopsy photographs and video and audio recordings be
13 made confidential and exempt from the requirements of section
14 119.07(1), Florida Statutes, and Section 24(a) of Article I of
15 the State Constitution. The Legislature finds that photographs
16 or video or audio recordings of an autopsy show the deceased
17 in graphic and often disturbing fashion. Such photographs or
18 video or audio recordings may depict the deceased nude,
19 bruised, bloodied, broken, with bullet or other wounds, cut
20 open, dismembered, or decapitated. As such, photographs or
21 video or audio recordings of an autopsy are highly sensitive
22 depictions of the deceased which, if copied and publicized,
23 could result in trauma, sorrow, humiliation, or emotional
24 injury to the immediate family of the deceased, as well as
25 injury to the memory of the deceased. The Legislature further
26 finds that the exemption provided in this act should be given
27 retroactive application because it is remedial in nature and
28 furtheres the public policy embodied in section 382.008,
29 Florida Statutes, which provides that information on the death
30 certificate relating to the cause of death is confidential,
31 and the act mitigates the application of the public records

1 law in circumstances in which the privacy interests of the
2 deceased's surviving spouse, parent, or child are most
3 implicated. The Legislature notes that the existence of the
4 World Wide Web and the proliferation of personal computers
5 throughout the world encourages and promotes the wide
6 dissemination of photographs and video and audio recordings 24
7 hours a day and that widespread unauthorized dissemination of
8 autopsy photographs and video and audio recordings would
9 subject the immediate family of the deceased to continuous
10 injury. The Legislature further notes that there continue to
11 be other types of available information, such as the autopsy
12 report, which are less intrusive and injurious to the
13 immediate family members of the deceased and which continue to
14 provide for public oversight.

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

19
20
21
22
23
24
25
26
27
28
29
30
31

- 1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1356
- 4 - Includes audio recordings of autopsies under the newly
5 created exemption.
 - 6 - Provides that the exemption is to apply retroactively.
 - 7 - Provides that a surviving spouse, parent, or child of
8 the deceased or their legal representative, or a state
9 or federal agency in furtherance of its official duties,
10 may view or copy autopsy photographs or video or audio
11 recordings.
 - 12 - Provides that all others may have access (viewing,
13 duplicating, or publishing) to the autopsy photos,
14 videos, and audio recordings only upon a court order
15 showing good cause.
 - 16 - Provides that such access, if granted by the court, must
17 be performed under the direct supervision of the
18 custodian of the record.
 - 19 - Makes it a felony of the third degree to knowingly
20 violate the provisions of the act.
 - 21 - Provides that a surviving spouse, parent, or child of
22 the deceased or their legal representative must be a
23 party to any proceeding by a third party requesting
24 access to these records and requires the court to
25 appoint counsel to represent an indigent family.
 - 26 - Provides a criteria for the court to consider in
27 determining what constitutes good cause.
- 28
29
30
31