

By the Committees on Governmental Oversight and Productivity;  
Criminal Justice; and Senators King, Posey, Sebesta, Clary,  
Peadar, Bronson, Horne, Brown-Waite, Pruitt, Dawson, Burt,  
Constantine, Sanderson and Saunders

302-1591-01

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 local,  
7           state, or federal agency; prohibiting the  
8           custodian of a photograph or video or audio  
9           recording of an autopsy from permitting any  
10          person to view or duplicate a photograph or  
11          video or audio, except pursuant to court order  
12          and under the direct supervision of the  
13          custodian or his or her designee; exempting  
14          criminal and administrative proceedings from  
15          the act; requiring certain persons to be  
16          parties in a request for access to a photograph  
17          or video or audio recording of an autopsy;  
18          providing penalties; providing for future  
19          legislative review and repeal; providing a  
20          finding of public necessity; providing a  
21          retroactive effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

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25           Section 1. (1) A photograph or video or audio  
26 recording of an autopsy in the custody of a medical examiner  
27 is confidential and exempt from the requirements of section  
28 119.07(1) and Section 24(a), Article I of the State  
29 Constitution, except that a surviving spouse may view and copy  
30 a photograph or video or listen to or copy an audio recording  
31 of the deceased spouse's autopsy. If there is no surviving

1 spouse, the surviving parents shall have access to such  
2 records. If there is no surviving spouse or parent, an adult  
3 child shall have access to such records. A local governmental  
4 entity, or a state or federal agency, in furtherance of its  
5 official duties, pursuant to a written request, may view or  
6 copy a photograph or video or may listen to or copy an audio  
7 recording of an autopsy, but, unless otherwise required in the  
8 performance of its duties, the identity of the deceased shall  
9 remain confidential and exempt. The custodian of the record,  
10 or his or her designee, may not permit any other person to  
11 view or copy such photograph or video recording or listen to  
12 or copy an audio recording without a court order. For the  
13 purposes of this section, the term "medical examiner" means  
14 any district medical examiner, associate medical examiner, or  
15 substitute medical examiner acting pursuant to chapter 406,  
16 Florida Statutes, as well as any employee, deputy, or agent of  
17 a medical examiner or any other person who may obtain  
18 possession of a photograph or audio or video recording of an  
19 autopsy in the course of assisting a medical examiner in the  
20 performance of his or her official duties.

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 or  
24 copy an audio recording of an autopsy and may prescribe any  
25 restrictions or stipulations that the court deems appropriate.  
26 In determining good cause, the court shall consider whether  
27 such disclosure is necessary for the public evaluation of  
28 governmental performance; the seriousness of the intrusion  
29 into the family's right to privacy and whether such disclosure  
30 is the least-intrusive means available; and the availability  
31 of similar information in other public records, regardless of

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

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

14 (3)(a) Any custodian of a photograph or video or audio  
15 recording of an autopsy who willfully and knowingly violates  
16 this section commits a felony of the third degree, punishable  
17 as provided in section 775.082, section 775.083, or section  
18 775.084, Florida Statutes.

19 (b) Any person who willfully and knowingly violates a  
20 court order issued pursuant to this section commits a felony  
21 of the third degree, punishable as provided in section  
22 775.082, section 775.083, or section 775.084, Florida  
23 Statutes.

24 (4) A criminal or administrative proceeding is exempt  
25 from this section, but, unless otherwise exempted, is subject  
26 to all other provisions of chapter 119, Florida Statutes,  
27 however, this section does not prohibit a court in a criminal  
28 or administrative proceeding, upon good cause shown, from  
29 restricting or otherwise controlling the disclosure of an  
30 autopsy, crime-scene, or similar photograph or video or audio  
31 recording in the manner prescribed in this section.

1           (5) This exemption shall be given retroactive  
2 application.

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

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

1 types of available information, such as the autopsy report,  
2 which are less intrusive and injurious to the immediate family  
3 members of the deceased and which continue to provide for  
4 public oversight. The Legislature further finds that the  
5 exemption provided in this act should be given retroactive  
6 application because it is remedial in nature.

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

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12                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
13   COMMITTEE SUBSTITUTE FOR  
14   CS/SB 1356

15 Creates an exception to the exemption for a surviving spouse.

16 Provides that if there is no surviving spouse, the exception  
17 falls to the deceased's parents. If there are no surviving  
18 parents, the exception falls to the deceased's adult children.

18 Includes local governmental entities within the other  
19 governmental entities who may have access to autopsy records,  
20 upon written request, in the performance of their duties.

20 Creates a definition for the term "medical examiner."

21 Redefines "good cause" for purposes of a petition to obtain  
22 access to an autopsy report.

22 Provides that a surviving spouse must be provided notice of a  
23 petition for access to an autopsy record, as well as a copy of  
24 the petition, and reasonable notice of the opportunity to be  
25 present.