

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.

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

25  
26           Section 1. (1) 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) and s. 24(a), Art. I of the State Constitution,  
30 except that a surviving spouse may view and copy a photograph  
31 or video or listen to or copy an audio recording of the

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

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

27  
28 In determining good cause, the court shall consider whether  
29 such disclosure is necessary for the public evaluation of  
30 governmental performance; the seriousness of the intrusion  
31 into the family's right to privacy and whether such disclosure

1 is the least intrusive means available; and the availability  
2 of similar information in other public records, regardless of  
3 form. In all cases, the viewing, copying, listening to or  
4 other handling of a photograph or video or audio recording of  
5 an autopsy must be under the direct supervision of the  
6 custodian of the record or his or her designee.

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

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

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

26 (c) A criminal or administrative proceeding is exempt  
27 from this section, but unless otherwise exempted, is subject  
28 to all other provisions of Chapter 119, Florida Statutes,  
29 provided however that this section does not prohibit a court  
30 in a criminal or administrative proceeding upon good cause  
31 shown from restricting or otherwise controlling the disclosure

1 of an autopsy, crime-scene, or similar photograph or video or  
2 audio recordings in the manner prescribed herein.

3 (4) This exemption shall be given retroactive  
4 application.

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

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

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

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