



1 amending s. 119.07(6), F.S.; providing an  
2 exemption from public-records requirements for  
3 information or records in a court file which  
4 may reveal a part of the body of a person who  
5 is a victim of a sexual offense under ch. 794,  
6 ch. 800, or ch. 827, F.S., regardless of  
7 whether the information or record reveals the  
8 identity of the victim; providing an exemption  
9 from public-records requirements for a  
10 photograph, video recording, or audio recording  
11 of an autopsy which is contained in a court  
12 file; providing an exemption from  
13 public-records requirements for the photograph  
14 or video recording of the remains of a victim  
15 of a crime which is criminal intelligence  
16 information or criminal investigative  
17 information if the record is part of a court  
18 file; providing that such exemptions apply to  
19 records held before, on, or after the effective  
20 date of the act; requiring that records made  
21 exempt from disclosure be segregated from other  
22 records; requiring that records exempt from  
23 disclosure be inspected or copied only under  
24 the direct supervision of the clerk of the  
25 court having custody of the records or under  
26 the direct supervision of the clerk's designee;  
27 prohibiting an employee of the clerk of the  
28 court from allowing an unauthorized person to  
29 inspect or copy such records; providing  
30 criminal penalties; providing a statement of  
31 public necessity; providing an effective date.

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

2

3 Section 1. Present paragraph (j) of subsection (2) of  
4 section 119.071, Florida Statutes, is redesignated as  
5 paragraph (k), and a new paragraph (j) is added to that  
6 subsection, to read:

7 119.071 General exemptions from inspection or copying  
8 of public records.--

9 (2) AGENCY INVESTIGATIONS.--

10 (j)1. Any photograph or video recording of the remains  
11 of a victim of a crime which is criminal intelligence  
12 information or criminal investigative information is  
13 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
14 of the State Constitution.

15 2. Upon a showing of good cause, a court may issue an  
16 order authorizing a person to inspect or copy such photograph  
17 or video recording if the record is not otherwise exempt from  
18 inspection and copying. In its order, the court may prescribe  
19 any restriction or stipulation it deems appropriate. In  
20 determining good cause, the court shall consider whether such  
21 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.

27 3. The surviving spouse of the deceased shall be given  
28 reasonable notice of a petition filed with the court to  
29 inspect or copy the photograph or video recording, a copy of  
30 the petition, and reasonable notice of the opportunity to be  
31 present and heard at any hearing on the matter. If there is no

1 surviving spouse, notice and a copy of the petition shall be  
2 provided to the deceased's parents. If there is no surviving  
3 spouse or parent, notice and a copy of the petition shall be  
4 provided to the deceased's adult children. If the surviving  
5 relative authorized under this subparagraph to receive notice  
6 and a copy of the petition designates in writing an agent to  
7 receive notice and a copy of the petition, notice and a copy  
8 of the petition shall be provided to that agent.

9 4. A local, state, or federal governmental agency or  
10 entity, in furtherance of its official duties, may inspect or  
11 copy such photograph or video recording without a court order  
12 if the agency or entity submits a written request to the  
13 custodian of the photograph or video recording. The photograph  
14 or video recording shall retain its confidential and exempt  
15 status when held by such local, state, or federal agency or  
16 entity.

17 5. The custodian of such photograph or video recording  
18 shall segregate such photograph or video recording from any  
19 other records in the custodian's custody so that the  
20 photograph or video recording is not commingled with other  
21 records and inadvertently provided to a person who is not  
22 authorized to inspect or copy the photograph or video  
23 recording.

24 6. Unless authorized by this section or otherwise  
25 authorized by law, a person may not inspect or copy a  
26 photograph or video recording described in subparagraph 1. The  
27 custodian of such photograph or video recording may not permit  
28 the inspection or copying of the photograph or video recording  
29 unless authorized by this section or otherwise authorized by  
30 law. Inspection or copying of such photograph or video  
31 recording must be under the direct supervision of the

1 custodian of the photograph or video recording or under the  
2 direct supervision of the custodian's designee. A custodian of  
3 a photograph or video recording described in subparagraph 1.,  
4 or the custodian's designee, who willfully and knowingly  
5 permits the unauthorized inspection or copying of such  
6 photograph or video recording commits a felony of the third  
7 degree, punishable as provided in s. 775.082, s. 775.083, or  
8 s. 775.084.

9 7. Any person who willfully and knowingly inspects or  
10 copies a photograph or video recording described in  
11 subparagraph 1. in violation of this section, or in violation  
12 of a court order issued pursuant to this section, commits a  
13 felony of the third degree, punishable as provided in s.  
14 775.082, s. 775.083, or s. 775.084.

15 8. The exemption in subparagraph 1. applies to the  
16 records that are held before, on, or after July 1, 2006.

17 9. Subparagraph 1. is subject to the Open Government  
18 Sunset Review Act in accordance with s. 119.15, and shall  
19 stand repealed on October 2, 2011, unless reviewed and saved  
20 from repeal through reenactment by the Legislature.

21 Section 2. (1) The Legislature finds that it is a  
22 public necessity that any photograph or video recording of the  
23 remains of a victim of a crime which is criminal intelligence  
24 information or criminal investigative information, whether  
25 active or inactive, be made confidential and exempt from s.  
26 119.07(1), Florida Statutes, and section 24(a) of Article I of  
27 the State Constitution. The Legislature further finds that the  
28 reasons that the Legislature provided for making photographs  
29 and video and audio recordings of an autopsy confidential and  
30 exempt pursuant to s. 406.135, Florida Statutes, also apply to  
31 making photographs and video recordings of the remains of a

1 victim of a crime confidential and exempt. Such records depict  
2 the deceased in a disturbing fashion and may depict the  
3 deceased nude, posed in a degrading manner, bruised, bloodied,  
4 broken, burned, with bullet or other wounds, cut open,  
5 ravaged, dismembered, decapitated, or decomposed. As such,  
6 these records are highly sensitive depictions of the deceased  
7 which, if viewed, copied, or publicized, could result in  
8 trauma, sorrow, humiliation, or emotional injury to the  
9 immediate family of the deceased, as well as injury to the  
10 memory of the deceased.

11 (2) The Legislature intends to make these records  
12 confidential and exempt in order to correct problems  
13 associated with the public dissemination of these records.  
14 Specifically, the Legislature notes that the existence of the  
15 World Wide Web and the proliferation of personal information  
16 throughout the world encourages and promotes the wide  
17 dissemination of these records 24 hours a day, and widespread  
18 unauthorized dissemination of these records would subject the  
19 immediate family of the deceased to continuous injury. Some  
20 people who might seek disclosure of the records would not be  
21 engaged in the gathering of news or other activities that have  
22 been deemed important to the pursuit of truth or fundamental  
23 to our democracy, but rather would seek disclosure of the  
24 records only because of their morbid fascination about them or  
25 their desire to be shocked or horrified by them. Such  
26 disclosure would traumatize and injure the immediate family  
27 members of a deceased crime victim and degrade human dignity.  
28 In *Campus Communications, Inc. v. Earnhardt*, 821 So.2d 388,  
29 397 (Fla. 5th DCA 2002), the Fifth District Court of Appeal  
30 noted that the Legislature had found the public display of  
31 photographs and video and audio recordings of an autopsy to be

1 "morally reprehensible and anathema to the citizens of  
2 Florida." The Legislature finds that the public display of the  
3 photographs and video recordings of the remains of a victim of  
4 a crime are no less morally reprehensible and anathema to the  
5 citizens of Florida.

6       (3) The Legislature further finds that the public  
7 dissemination of the records made confidential and exempt by  
8 this act would be no less extreme and outrageous than the  
9 alleged conduct of a television station in broadcasting the  
10 remains of an abducted six-year-old child, which the Fifth  
11 District Court of Appeal in *Armstrong v. H.C. Communications,*  
12 *Inc.*, 575 So.2d 280, 282 (Fla. 5th DCA 1991) concluded would  
13 constitute the tort of outrageousness: "We have no difficulty  
14 in concluding that reasonable persons in the community could  
15 find that the alleged conduct . . . was outrageous in  
16 character and exceeded the bounds of decency so as to be  
17 intolerable to a civilized community."

18       (4) The Legislature notes that when these records are  
19 admitted into evidence, information other than the records  
20 themselves is available which describes what is depicted in  
21 the records, is less injurious to the immediate family members  
22 of the deceased, and continues to provide for public  
23 oversight. For example, the trial transcript describes the  
24 introduction of the records into evidence. Further, if experts  
25 testify about the information in the records, that information  
26 will be part of the trial transcript as will any disagreement  
27 between the prosecutor and defense attorney, or between  
28 experts for the prosecution and experts for the defense, over  
29 what is depicted in the records.

30       (5) The Legislature further finds that the exemption  
31 provided in this act should be given retroactive application

1 because it is remedial in nature. The Legislature has  
2 indicated that its intent in creating this exemption is to  
3 correct problems associated with the public dissemination of  
4 the photograph or video recording of the remains of the victim  
5 of a crime. The retroactive application of this exemption does  
6 not impair any vested right. In Campus Communications, Inc. v.  
7 Earnhardt, 821 So.2d 398, the court disagreed with the  
8 appellant's assertion that it had a vested right to inspect  
9 and copy the autopsy photographs of Dale Earnhardt "for two  
10 reasons: 1) the right to inspect and copy public records is a  
11 right subject to divestment by enactment of statutory  
12 exemptions by the Legislature; and 2) the rights provided  
13 under the Public Records Act are public rights."

14 (6) The Legislature further finds that preventing  
15 injury to the immediate family members of the deceased is a  
16 compelling governmental interest. The Legislature also finds  
17 that the immediate family members of the deceased have a  
18 privacy interest in the future disclosure of the photographs  
19 and video recordings of the deceased's remains. In Barron v.  
20 Florida Freedom Newspapers, 531 So.2d 113, 116 (Fla. 1988), a  
21 case dealing with closure of court proceedings to media  
22 representatives, the Florida Supreme Court found that "under  
23 appropriate circumstances, the constitutional right of privacy  
24 established in Florida by the adoption of article I, section  
25 23, could form a constitutional basis for closure under (e)  
26 and (f)." The Legislature believes the court's reasoning in  
27 Barron extends to the disclosure of the photographs and video  
28 recordings of the remains of a victim of a crime and the  
29 substantial injury such disclosure will inflict on the  
30 immediate family members of the deceased.

31



1           (7) The Legislature further finds that the judicial  
2 branch recognizes in its own rules the need for restricting  
3 the disclosure of certain records. Rule 2.051(c)(7), Florida  
4 Rules of Judicial Administration, provides that "records of  
5 the judicial branch shall be confidential" if those records  
6 have been "made confidential under the Florida and United  
7 States Constitutions and Florida and federal law," and Rule  
8 2.051(c)(9)(A)(v), Florida Rules of Judicial Administration,  
9 provides that "records of the judicial branch shall be  
10 confidential" to "avoid substantial injury to third parties."

11           (8) In order to protect and balance the rights or  
12 interests involved in restricting disclosure of these records  
13 with the rights or interests involved in disclosing these  
14 records, the Legislature intends to provide that a court may  
15 allow these records to be inspected or copied if good cause is  
16 demonstrated to the court. This process is identical to the  
17 process for the limited disclosure of photographs and video or  
18 audio recordings of an autopsy in s. 406.335, Florida  
19 Statutes, which was upheld by Fifth District Court of Appeal  
20 in the case involving Campus Communications, Inc.

21           Section 3. Subsection (6) of section 119.07, Florida  
22 Statutes, is transferred, redesignated as section 119.075,  
23 Florida Statutes, and amended to read:

24           119.075 Records in court files; exemptions from  
25 inspection or copying; criminal penalties.--

26           (1)(6) Nothing in this chapter shall be construed to  
27 exempt from subsection (1) a public record that was made a  
28 part of a court file in a criminal or civil case and that is  
29 not specifically closed by order of court, except:

30           (a) A public record that was prepared by an agency  
31 attorney or at his or her express direction as made exempt by

1 ~~as provided in s. 119.071(1)(d); and (f), (2)(d), (e), and (f),~~  
2 ~~and (4)(c) and except~~  
3       **(b) Data processing software obtained by an agency**  
4 **under a licensing agreement as made exempt by s.**  
5 **119.071(1)(f);**  
6       **(c) Any information revealing surveillance techniques**  
7 **or procedures or personnel as made exempt by s. 119.071(2)(d);**  
8       **(d) Any information revealing the substance of a**  
9 **confession of a person arrested as made exempt by s.**  
10 **119.071(2)(e);**  
11       **(e) Any information revealing the identify of a**  
12 **confidential informant or confidential source as made exempt**  
13 **by s. 119.071(2)(f);**  
14       **(f) Any information revealing undercover personnel of**  
15 **any criminal justice agency as made exempt by s.**  
16 **119.071(4)(c);**  
17       **(g)1. Information or records that may reveal the**  
18 **identity of a person who is a victim of a sexual offense under**  
19 **chapter 794, chapter 800, or chapter 827, as made exempt by s.**  
20 **119.07(2)(h)1.; or as provided in s. 119.071(2)(h).**  
21       **2. Information or records that may reveal a part of**  
22 **the body of a person who is a victim of a sexual offense under**  
23 **chapter 794, chapter 800, or chapter 827, regardless of**  
24 **whether the information or record reveals the identity of the**  
25 **victim as made exempt by s. 119.071(2)(h)2.;**  
26       **(h) Any photograph, video recording, or audio**  
27 **recording of an autopsy as made exempt by s. 406.135,**  
28 **regardless of the exception provided in s. 406.135(3)(c); and**  
29       **(i) Any photograph or video recording of the remains**  
30 **of a victim of a crime which is criminal investigative**  
31

1 information or criminal intelligence information as made  
2 exempt by s. 119.071(2)(j)1.

3 (2) The exemptions provided in subparagraphs (1)(g)2.,  
4 (1)(h), and (1)(i) apply to the records specified in these  
5 exemptions which are held before, on, or after July 1, 2006.

6 (3) The clerk of the court having custody of any  
7 record described in this section shall segregate the record  
8 from any other record in the clerk's custody so that it is not  
9 commingled with the other records and inadvertently provided  
10 to a person who is not authorized to inspect or copy the  
11 record. Inspection or copying of such record must be under the  
12 direct supervision of the clerk of the court having custody of  
13 such record or under the direct supervision of the clerk's  
14 designee. An employee of the clerk of the court having custody  
15 of any record described in this section may not permit a  
16 person to inspect or copy such record unless authorized by  
17 this section or otherwise authorized by law.

18 (4)(a) Any employee of the clerk of the court having  
19 custody of any record described in this section who willfully  
20 and knowingly permits the unauthorized inspection or copying  
21 of such record commits a felony of the third degree,  
22 punishable as provided in s. 775.082, s. 775.083, or s.  
23 775.084.

24 (b) Any person who willfully and knowingly inspects or  
25 copies any record described in this section in violation of  
26 this section or in violation of a court order issued pursuant  
27 to this section commits a felony of the third degree,  
28 punishable as provided in s. 775.082, s. 775.083, or s.  
29 775.084.

30 Section 4. (1) The Legislature finds that it is a  
31 public necessity that the following public records that are

1 made a part of a court file in a criminal or civil case be  
2 made confidential and exempt from s. 119.07(1), Florida  
3 Statutes, and section 24(a) of Article I of the State  
4 Constitution:

5 (a) Information or records that may reveal a part of  
6 the body of a person who is a victim of a sexual offense under  
7 chapter 794, chapter 800, or chapter 827, Florida Statutes,  
8 regardless of whether the information or records reveal the  
9 identity of the victim, as made exempt by s. 119.071(2)(h)2.,  
10 Florida Statutes.

11 (b) Any photograph, video recording, or audio  
12 recording of an autopsy as made exempt by s. 406.135, Florida  
13 Statutes, regardless of the exception provided in s.  
14 406.135(3)(c).

15 (c) Any photograph or video recording of the remains  
16 of a victim of a crime which is criminal intelligence  
17 information or criminal investigative information, whether  
18 active or inactive as made exempt by s. 119.071(2)(j)1.,  
19 Florida Statutes.

20 (2) The Legislature further finds that the reasons  
21 that the Legislature provided for making photographs and video  
22 and audio recordings of an autopsy confidential and exempt  
23 pursuant to s. 406.135, Florida Statutes, also apply to making  
24 information or records that reveal a part of the body of a  
25 person who is a living victim of any of the described sexual  
26 offenses confidential and exempt when the information and  
27 records are made a part of a court file in a criminal or civil  
28 case. Such information or records depict the victim in a  
29 disturbing fashion and may depict the victim nude or with  
30 private body parts exposed or partially exposed. Such  
31 information or records may also depict the victim bruised,

1 bloodied, broken, burned, with bullet or other wounds, or cut  
2 open. Additionally, such information or records may identify  
3 the victim, thereby placing the victim at risk of harassment  
4 or attack by the victim's assailant. As such, these records  
5 are highly sensitive depictions of the victim which, if  
6 viewed, copied, or publicized, could result in trauma, sorrow,  
7 humiliation, or emotional injury to the victim, as well as  
8 place the victim at risk of harassment or attack by the  
9 victim's assailant.

10 (3) The Legislature further finds that the reasons for  
11 making the records of an autopsy confidential and exempt  
12 pursuant to s. 406.135, Florida Statutes, also apply to making  
13 the following records confidential and exempt when they are  
14 made a part of a court file in a criminal or civil case:  
15 information or records that reveal a part of the body of a  
16 person who is a deceased victim of the described sexual  
17 offenses; any photograph, video recording, or audio recording  
18 of an autopsy; and any photograph or video recording of the  
19 remains of a victim of a crime which is criminal intelligence  
20 information or criminal investigative information. Such  
21 records depict the deceased in a disturbing fashion and may  
22 depict the deceased nude, posed in a degrading manner,  
23 bruised, bloodied, broken, burned, with bullet or other  
24 wounds, cut open, ravaged, dismembered, decapitated, or  
25 decomposed. As such, these records are highly sensitive  
26 depictions of the deceased which, if viewed, copied, or  
27 publicized, could result in trauma, sorrow, humiliation, or  
28 emotional injury to the immediate family of the deceased, as  
29 well as injury to the memory of the deceased.

30 (4) The Legislature intends to make all of the records  
31 described in this section confidential and exempt when made a

1 part of the court file in a criminal or civil case in order to  
2 correct problems associated with the public dissemination of  
3 these records. Specifically, the Legislature notes that the  
4 existence of the World Wide Web and the proliferation of  
5 personal information throughout the world encourages and  
6 promotes the wide dissemination of these records 24 hours a  
7 day. Such widespread unauthorized dissemination of these  
8 records would continuously injure a living sexual offense  
9 victim and the immediate family of a deceased person subject  
10 to an autopsy or the victim of a crime. Some people who might  
11 seek disclosure of records depicting the body parts of a  
12 living sexual offense victim would not be engaged in the  
13 gathering of news or other activities that have been deemed  
14 important to the pursuit of truth or fundamental to our  
15 democracy but would rather seek disclosure of the records for  
16 their purely salacious interest in them or to harass or attack  
17 the victim. In the case of the records relating to a deceased  
18 person who is the subject of an autopsy or a victim of a  
19 crime, some people would seek disclosure of these records only  
20 because of their morbid fascination with them or their desire  
21 to be shocked or horrified by them. Such disclosure would  
22 traumatize and injure such sexual offense victim and the  
23 immediate family members of such deceased person and degrade  
24 human dignity. In Campus Communications, Inc. v. Earnhardt,  
25 821 So.2d 388, 397 (Fla. 5th DCA 2002), the Fifth District  
26 Court of Appeal noted that the Legislature had found the  
27 public display of photographs and video and audio recordings  
28 of an autopsy to be "morally reprehensible and anathema to the  
29 citizens of Florida." The Legislature finds that the public  
30 display of the records it seeks to make confidential and  
31

1 exempt are no less "morally reprehensible and anathema to the  
2 citizens of Florida."

3 (5) The Legislature further finds that the public  
4 dissemination of the records made confidential and exempt by  
5 this act would be no less extreme and outrageous than the  
6 alleged conduct of a television station in broadcasting the  
7 remains of an abducted six-year-old child, which the Fifth  
8 District Court of Appeal in Armstrong v. H.C. Communications,  
9 Inc., 575 So.2d 280, 282 (Fla. 5th DCA 1991) concluded would  
10 constitute the tort of outrageousness: "We have no difficulty  
11 in concluding that reasonable persons in the community could  
12 find that the alleged conduct . . . was outrageous in  
13 character and exceeded the bounds of decency so as to be  
14 intolerable to a civilized community."

15 (6) The Legislature notes that when these records are  
16 admitted into evidence, information other than the records  
17 themselves is available which describes what is depicted in  
18 the records, is less injurious to the immediate family members  
19 of the deceased, and continues to provide for public  
20 oversight. For example, the trial transcript describes the  
21 introduction of the records into evidence. Further, if experts  
22 testify about the information in the records, that information  
23 will be part of the trial transcript as will any disagreement  
24 between the prosecutor and defense attorney, or between  
25 experts for the prosecution and experts for the defense, over  
26 what is depicted in the records. As regards an autopsy, there  
27 is a written report of the findings of the autopsy.

28 (7) The Legislature further finds that the exemptions  
29 provided in this act should be given retroactive application  
30 because they are remedial in nature. The Legislature has  
31 indicated that its intent in creating these exemptions is to

1 correct problems associated with the public dissemination of  
2 the exempted records. The retroactive application of these  
3 exemptions does not impair any vested right. In Campus  
4 Communications, Inc. v. Earnhardt, 821 So.2d at 398, the court  
5 disagreed with the appellant's assertion that it had a vested  
6 right to inspect and copy the autopsy photographs of Dale  
7 Earnhardt "for two reasons: 1) the right to inspect and copy  
8 public records is a right subject to divestment by enactment  
9 of statutory exemptions by the Legislature; and 2) the rights  
10 provided under the Public Records Act are public rights."

11 (8) The Legislature further finds that preventing  
12 injury to a sexual offense victim and the immediate family  
13 members of a deceased person is a compelling governmental  
14 interest. The Legislature also finds that these persons have a  
15 privacy interest in the future disclosure of the described  
16 records. In Barron v. Florida Freedom Newspapers, 531 So.2d  
17 113, 116 (Fla. 1988), a case dealing with closure of court  
18 proceedings to media representatives, the Florida Supreme  
19 Court found that "under appropriate circumstances, the  
20 constitutional right of privacy established in Florida by the  
21 adoption of article I, section 23, could form a constitutional  
22 basis for closure under (e) and (f)." The Legislature believes  
23 the court's reasoning in Barron extends to the disclosure of  
24 the described records and the substantial injury such  
25 disclosure will inflict on a sexual offense victim or the  
26 immediate family members of a deceased person.

27 (9) The Legislature further finds that the judicial  
28 branch recognizes in its own rules the need for restricting  
29 the disclosure of certain records. Rule 2.051(c)(7), Florida  
30 Rules of Judicial Administration, provides that "records of  
31 the judicial branch shall be confidential" if those records



1 have been "made confidential under the Florida and United  
2 States Constitutions and Florida and federal law," and Rule  
3 2.051(c)(9)(A)(v), Florida Rules of Judicial Administration,  
4 provides that "records of the judicial branch shall be  
5 confidential" to "avoid substantial injury to third parties."

6 (10) The Legislature further finds that Rule 2.051,  
7 Florida Rules of Judicial Administration, provides a procedure  
8 and a process to protect and balance the rights or interests  
9 involved in restricting disclosure of these records with the  
10 rights or interests involved in disclosing these records.

11 Section 5. This act shall take effect July 1, 2006.

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14 SENATE SUMMARY

15 Provides exemptions from public-records requirements for  
16 photographs or video recordings of the remains of a  
17 victim of a crime which are criminal intelligence  
18 information or criminal investigative information.  
19 Provides for a court to authorize disclosure upon a  
20 showing of good cause. Requires that certain notice be  
21 provided before a hearing on disclosure. Requires that  
22 such photographs and recordings be segregated from other  
23 records. Provides an exemption from public-records  
24 requirements for records, photographs, or video  
25 recordings that are part of a court file and that reveal  
26 the victim of a sexual offense, an autopsy, or certain  
27 victims of crimes. Requires that such records be  
28 segregated. Provides penalties for the unlawful  
29 disclosure of such records. Provides for review of the  
30 exemptions under the Open Government Sunset Review Act.  
31 (See bill for details.)