

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act regarding autopsy photographs and video
 4 and audio recordings; amending s. 406.135, F.S., which
 5 provides an exemption from public records requirements for
 6 photographs and video and audio recordings of an autopsy
 7 in the custody of a medical examiner; reorganizing the
 8 section and making editorial changes; removing the
 9 scheduled repeal of the exemption; providing an effective
 10 date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 406.135, Florida Statutes, is amended
 15 to read:

16 406.135 Autopsies; confidentiality of photographs and
 17 video and audio recordings; exemption.--

18 (1) For the purpose of this section, the term "medical
 19 examiner" means any district medical examiner, associate medical
 20 examiner, or substitute medical examiner acting pursuant to this
 21 chapter, as well as any employee, deputy, or agent of a medical
 22 examiner or any other person who may obtain possession of a
 23 photograph or audio or video recording of an autopsy in the
 24 course of assisting a medical examiner in the performance of his
 25 or her official duties.

26 (2) A photograph or video or audio recording of an autopsy
 27 held by ~~in the custody of~~ a medical examiner is confidential and
 28 exempt from ~~the requirements of~~ s. 119.07(1) and s. 24(a), Art.

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29 I of the State Constitution, except that a surviving spouse may
30 view and copy a photograph or video recording or listen to or
31 copy an audio recording of the deceased spouse's autopsy. If
32 there is no surviving spouse, then the surviving parents shall
33 have access to such records. If there is no surviving spouse or
34 parent, then an adult child shall have access to such records.

35 (3) (a) ~~However,~~ The deceased's surviving relative, with
36 whom authority rests to obtain such records, may designate in
37 writing an agent to obtain such records.

38 (b) A local governmental entity, or a state or federal
39 agency, in furtherance of its official duties, pursuant to a
40 written request, may view or copy a photograph or video
41 recording or may listen to or copy an audio recording of an
42 autopsy, and unless otherwise required in the performance of
43 their duties, the identity of the deceased shall remain
44 confidential and exempt.

45 (c) The custodian of the record, or his or her designee,
46 may not permit any other person, except an agent designated in
47 writing by the deceased's surviving relative with whom authority
48 rests to obtain such records, to view or copy such photograph or
49 video recording or listen to or copy an audio recording without
50 a court order. ~~For the purposes of this section, the term~~
51 ~~"medical examiner" means any district medical examiner,~~
52 ~~associate medical examiner, or substitute medical examiner~~
53 ~~acting pursuant to this chapter, as well as any employee,~~
54 ~~deputy, or agent of a medical examiner or any other person who~~
55 ~~may obtain possession of a photograph or audio or video~~

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56 ~~recording of an autopsy in the course of assisting a medical~~
57 ~~examiner in the performance of his or her official duties.~~

58 (4)~~(2)~~(a) The court, upon a showing of good cause, may
59 issue an order authorizing any person to view or copy a
60 photograph or video recording of an autopsy or to listen to or
61 copy an audio recording of an autopsy and may prescribe any
62 restrictions or stipulations that the court deems appropriate.

63 (b) In determining good cause, the court shall consider
64 whether such disclosure is necessary for the public evaluation
65 of governmental performance; the seriousness of the intrusion
66 into the family's right to privacy and whether such disclosure
67 is the least intrusive means available; and the availability of
68 similar information in other public records, regardless of form.

69 (c) In all cases, the viewing, copying, listening to or
70 other handling of a photograph or video or audio recording of an
71 autopsy must be under the direct supervision of the custodian of
72 the record or his or her designee.

73 (5)~~(b)~~ A surviving spouse shall be given reasonable notice
74 of a petition filed with the court to view or copy a photograph
75 or video recording of an autopsy or a petition to listen to or
76 copy an audio recording, a copy of such petition, and reasonable
77 notice of the opportunity to be present and heard at any hearing
78 on the matter. If there is no surviving spouse, then such notice
79 must be given to the parents of the deceased ~~deceased's parents~~,
80 and if the deceased has no living parent, then to the adult
81 children of the deceased.

82 (6)~~(3)~~(a) Any custodian of a photograph or video or audio
83 recording of an autopsy who willfully and knowingly violates

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84 this section commits a felony of the third degree, punishable as
85 provided in s. 775.082, s. 775.083, or s. 775.084.

86 (b) Any person who willfully and knowingly violates a
87 court order issued pursuant to this section commits a felony of
88 the third degree, punishable as provided in s. 775.082, s.
89 775.083, or s. 775.084.

90 (7)~~(e)~~ A criminal or administrative proceeding is exempt
91 from this section, but unless otherwise exempted, is subject to
92 all other provisions of chapter 119, provided however that this
93 section does not prohibit a court in a criminal or
94 administrative proceeding upon good cause shown from restricting
95 or otherwise controlling the disclosure of an autopsy, crime
96 scene, or similar photograph or video or audio recordings in the
97 manner prescribed herein.

98 (8)~~(4)~~ This exemption shall be given retroactive
99 application.

100 ~~(5) The exemption in this section is subject to the Open~~
101 ~~Government Sunset Review Act of 1995 in accordance with s.~~
102 ~~119.15, and shall stand repealed on October 2, 2006, unless~~
103 ~~reviewed and saved from repeal through reenactment by the~~
104 ~~Legislature.~~

105 Section 2. This act shall take effect October 1, 2006.