

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1513 Pub. Rec./Autopsy Reports of Child Victims of Domestic Violence

SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Clemons

TIED BILLS: **IDEN./SIM. BILLS:** SB 1550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	15 Y, 0 N, As CS	Mathews	Hall
2) Government Operations Subcommittee	17 Y, 0 N	Landry	Toliver
3) Judiciary Committee	19 Y, 0 N	Mathews	Kramer

SUMMARY ANALYSIS

Section 741.28, F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or other offense resulting in physical injury or death of one family or household member by another family or household member. In cases of domestic violence resulting in death, an autopsy may be conducted to determine the victim's specific cause of death.

Under s. 406.135, F.S., a photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from public record. The exemption provides an exception for a surviving spouse to view and copy a photograph or video or to listen to an audio recording of the deceased spouse's autopsy. If the deceased has no surviving spouse, then his or her surviving parent or adult child may have access to such records. A local government entity, or a state or federal agency, may also access such photographs or recordings upon a written request submitted for the purpose of performing an official duty. Additionally, upon a showing of good cause, a court may issue an order authorizing any other person to view or copy a photograph or video recording of an autopsy or to listen to or copy an audio recording of an autopsy under the supervision of the custodian of records and may order any appropriate restrictions or stipulations on such access. If a petition making such a request is filed, the court must provide the surviving spouse or other family member with notice and a copy of the petition and an opportunity to be present and heard at the hearing on the petition.

Current law does not exempt a medical examiner's written autopsy report from public record. As such, an autopsy report containing graphic details about the nature of the deceased's injuries may be obtained and publicly shared without the surviving family member's knowledge or consent.

CS/HB 1513 creates a public records exemption for an autopsy report held by a medical examiner of a minor child whose death was related to an act of domestic violence. The bill includes an exception permitting a surviving parent of the deceased minor to view and copy the autopsy report, so long as he or she is not the parent who committed the domestic violence which caused the minor's death. Additionally, the bill requires the surviving parent to be notified of any petition filed to view the minor's autopsy report and to be given an opportunity to be present and heard at a hearing on such a petition.

The bill provides for retroactive application of the newly created public record exemption. The bill provides the public record exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill is effective upon becoming a law.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meeting exemption. The bill creates a new public record exemption for autopsy reports of minor victims of domestic violence; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h1513e.JDC

DATE: 2/8/2022

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no broader than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act⁴ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

There is a difference between public records that are "exempt" or "confidential and exempt."⁷ Information that is "confidential and exempt" may be released only under the circumstances defined by the Legislature or pursuant to a court order.⁸ However, information that is exempt may be released at the discretion of the records custodian under certain circumstances.⁹

Domestic Violence

Under s. 728.41, F.S., domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member¹⁰ by another family or household member. In cases of domestic violence resulting in death, an autopsy may be conducted to determine the victim's specific cause of death.¹¹ In 2019, there were 200 reported

¹ Art. I, s. 24(c), Fla. Const.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Art. I, s. 24(c), Fla. Const.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ S. 119.15(3), F.S.

⁷ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

⁸ *Id.*

⁹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) (holding that information that is "exempt" and not "confidential and exempt" is not prohibited from being displayed at the discretion of the custodian).

¹⁰ "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. S. 741.28(3), F.S.

¹¹ S. 741.28(2), F.S.

incidents of domestic violence-related criminal homicide in Florida. The most common victim to offender relationships were spouses (33%) followed by co-habitants (17.5%) and children of the offender (15%).¹²

Autopsy Recordings and Reports

Under s. 406.135, F.S., photographs or video or audio recordings of an autopsy held by a medical examiner are deemed confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a) of the Florida Constitution.¹³ However, a surviving spouse may view and copy a photograph or video or audio recording of his or her deceased spouse's autopsy.¹⁴ If the deceased has no surviving spouse, then a surviving parent or adult child may have access to such records.

A local government entity, or a state or federal agency, may make a written request to view to a photograph or video or audio recording of an autopsy for the purpose of performing its official duties. The government entity, or state or federal agency, must keep the identity of the deceased confidential, unless disclosure is otherwise required in the performance of its official duties.¹⁵

Any other person wishing to access such photographs or recordings may petition the court for authorization to view or copy a photograph or video or to listen to an audio recording of an autopsy.¹⁶ Upon a showing of good cause, a court may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy or to listen to or copy an audio recording of an autopsy under the supervision of the custodian of records and may order any appropriate restrictions or stipulations on such access. If a petition making such a request is filed with the court, the surviving spouse or other family member must be given notice and a copy of the petition and have the opportunity to be present and heard at the hearing on the petition.¹⁷

In determining good cause on a request to view or copy such an autopsy recording, the court must consider the following factors:

- Whether disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the deceased's family's right to privacy and whether disclosure is the least intrusive means available; and
- The availability of similar information in other public records.¹⁸

A custodian of a photograph, video, or audio recording of an autopsy who willfully and knowingly violates s. 406.135, F.S., commits a third degree felony. Similarly, a person willfully and knowingly violates a court order issued under s. 406.135, F.S., commits a third degree felony.¹⁹

While the photographs or video or audio recordings of an autopsy are protected from public disclosure, generally a medical examiner's case files and autopsy reports are public records and are open for inspection and copying by any person.²⁰ As such, an autopsy report containing graphic details about the nature of the deceased's injuries may be obtained and publicly shared without the surviving family member's knowledge or consent.²¹

Effect of Proposed Changes

¹² FDLE, *Reported Domestic Violence in Florida: Victim Totals by Offense 2019*, http://www.fdle.state.fl.us/FSAC/Documents/PDF/2019/DV_Victim_Totals_by_Offense.aspx (last visited Feb. 8, 2022).

¹³ S. 406.135(2), F.S.,

¹⁴ *Id.*

¹⁵ S. 406.135(4)(b), F.S.

¹⁶ S. 406.135(5)(a), F.S.

¹⁷ S. 406.135(6), F.S.

¹⁸ S. 406.135(5)(b), F.S.

¹⁹ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

²⁰ S. 119.01(1), F.S.

²¹ Autopsy reports involved in an active criminal investigation may be exempt from public record so long as the investigation remains active. S. 119.071(2)(c), F.S.

CS/HB 1513 creates a public records exemption for the autopsy report of a minor child whose death was the result of an act of domestic violence.

Under the bill a minor is a person younger than 18 years of age who has not had the disability of nonage removed pursuant to ss. 743.01²² or s. 743.015, F.S.²³

The bill defines domestic violence as the term is defined s. 741.28, F.S., meaning any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

Under the bill, a surviving parent of the deceased minor is authorized to view and copy an autopsy report so long as he or she is not the parent who committed the domestic violence which caused the minor's death. Additionally, a surviving parent who was not responsible for the minor's death must be given notice of a petition filed with the court to view the minor's autopsy report, must be provided a copy of the petition, and must be given reasonable notice and the opportunity to be present and heard at any hearing on the petition.

The bill expands the authority for a government entity, or a state or federal agency, to view and copy an autopsy recording in the performance of an official duty to also include an autopsy report of a minor victim of domestic violence. The government entity must keep the identity of the minor victim of domestic violence confidential unless disclosure is required in the performance of its official duties.

Additionally, the bill authorizes any other person to petition a court to view an autopsy report of a minor under the supervision of the custodian of records and upon a showing of good cause to the court. In considering whether to grant such a petition, a court must consider the current factors under s. 406.135(5)(b), F.S., which include balancing the request with the minor's family's right to privacy.

Under the bill, a custodian of records who willfully and knowingly violates s. 406.135, F.S., relating to an autopsy report of a minor victim of domestic violence commits a third degree felony. Additionally, any other person who willfully and knowingly violates a court ordered issued under s. 406.135, F.S., relating to an autopsy report of a minor victim of domestic violence, commits a third degree felony.

The public records exemption created by the bill is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Provides that the act may be cited as the "Rex and Brody Reinhart Act."

Section 2: Amends s. 406.135, F.S., relating to autopsies; confidentiality of photographs and video and audio recordings; exemption.

Section 3: Provides a public necessity statement.

Section 4: Provides the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²² S. 743.01, F.S., provides that a minor who becomes married is no longer considered to have the disability of nonage. As such, the minor is then able to make his or her own decisions, assume the management of his or her estate, and sue others or be sued as any other competent adult would be.

²³ S. 743.015, F.S., provides that a court may, upon petition by a minor's parent of guardian, remove the disability of nonage for a minor 16 years of age or older. This action allows the minor to be treated as an adult.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant fiscal impact on medical examiners responsible for redacting confidential or exempt information prior to releasing a report or record as required under the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meeting exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public records or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for the autopsy report of minor victim of domestic violence, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment named the act the “Rex and Brody Reinhart Act.”

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.