

By Senator Martin

33-01108-23

20231402__

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; defining terms; providing an exemption
4 from public records requirements for investigative
5 genetic genealogy materials; authorizing the
6 disclosure of investigative genetic genealogy
7 materials under specified circumstances; providing for
8 retroactive application; providing for future
9 legislative review and repeal of the exemption;
10 providing a statement of public necessity; providing
11 an effective date.

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

14
15 Section 1. Paragraph (r) is added to subsection (2) of
16 section 119.071, Florida Statutes, to read:

17 119.071 General exemptions from inspection or copying of
18 public records.—

19 (2) AGENCY INVESTIGATIONS.—

20 (r)1. As used in this paragraph, the term:

21 a. "Genetic genealogy" is the application of genetics to
22 genealogy wherein DNA testing is combined with traditional
23 genealogical methods to infer relationships between individuals
24 and determine ancestry.

25 b. "Investigative genetic genealogy" means the application
26 of genetic genealogy and law enforcement investigative
27 techniques to develop investigative leads in unsolved violent
28 crimes and provide investigative leads as to the identity of
29 unidentified human remains and living unidentified missing

33-01108-23

20231402__

30 persons. A single nucleotide polymorphism or whole genome
31 sequencing DNA profile is developed from an unknown DNA profile
32 from a crime scene or unidentified human remains and then
33 uploaded into a web-based genealogy database. Genealogy
34 databases are used to detect possible genetic relationships with
35 distant relatives.

36 c. "Investigative genetic genealogy materials" means the
37 information, records, and genetic profiles created or collected
38 by or on behalf of a law enforcement agency conducting
39 investigative genetic genealogy research. This includes any
40 names and personal identifying information or identifiers of
41 individuals determined through the use of genealogy databases,
42 traditional genealogical methods, or other investigative means.
43 The term does not include:

44 (I) The identity or personal identifying information of the
45 donor of a biological sample attributable to a perpetrator, with
46 the exception of the single nucleotide polymorphism or whole
47 genome sequencing DNA profile developed from the crime scene
48 evidence; or

49 (II) Any individual identified through investigative
50 genetic genealogy who is a witness to or has personal knowledge
51 related to the crime under investigation, with the exception of
52 the individual's single nucleotide polymorphism or whole genome
53 sequencing DNA profile.

54 d. "Single nucleotide polymorphism" is a variation in a
55 single unit in a DNA sequence. Profiles consisting of single
56 nucleotide polymorphism data from various locations in a genome
57 are made up of letters representing the building blocks of DNA
58 (A, T, G, and C). However, depending on the locations tested,

33-01108-23

20231402__

59 single nucleotide polymorphism data may also reveal information
60 on physical characteristics, disease predisposition, and
61 susceptibility to environmental factors such as toxins or drugs.

62 e. "Traditional genealogical methods" means the use of
63 genealogical databases and historical records to trace the
64 family lineage of an individual.

65 f. "Whole genome sequencing" means the attempt to determine
66 the genetic code using A, T, G, and C for an individual
67 throughout the entire complement of DNA, including all genes.
68 Whole genome sequencing data represents the entirety of an
69 individual's DNA and the traits, health, and ancestry
70 information it contains.

71 2. Investigative genetic genealogy materials, including a
72 single nucleotide polymorphism or a whole genome sequencing
73 profile, are confidential and exempt from s. 119.07(1) and s.
74 24(a), Art. I of the State Constitution.

75 3. Notwithstanding subparagraph 2., investigative genetic
76 genealogy materials, including a single nucleotide polymorphism
77 or whole genome sequencing profile, or a portion thereof, may be
78 disclosed by a law enforcement agency:

79 a. In furtherance of its official duties and
80 responsibilities; or

81 b. To another governmental agency in the furtherance of its
82 official duties and responsibilities.

83 4. Notwithstanding subparagraph 2., investigative genetic
84 genealogy materials, including a single nucleotide polymorphism
85 or whole genome sequencing profile, or a portion thereof, must
86 be disclosed pursuant to a court order in furtherance of a
87 criminal prosecution. If a court orders that investigative

33-01108-23

20231402__

88 genetic genealogy materials be disclosed, the recipient of the
89 records or information must maintain the confidentiality of
90 those records or information and may only disclose them publicly
91 as needed for purposes of a criminal prosecution, as determined
92 by the court.

93 5. The exemption in subparagraph 2. must be given
94 retroactive application and must apply to all investigative
95 genetic genealogy materials, including a single nucleotide
96 polymorphism or whole genome sequencing profile, or a portion
97 thereof, held in the possession of an agency before, on, or
98 after July 1, 2023.

99 6. This paragraph is subject to the Open Government Sunset
100 Review Act in accordance with s. 119.15 and shall stand repealed
101 on October 2, 2028, unless reviewed and saved from repeal
102 through reenactment by the Legislature.

103 Section 2. The Legislature finds that it is a public
104 necessity that investigative genetic genealogy materials be made
105 confidential and exempt from s. 119.07(1), Florida Statutes, and
106 s. 24(a), Article I of the State Constitution. Investigative
107 genetic genealogy is an advanced investigative tool that uses
108 law enforcement agency investigative resources and traditional
109 genealogical research in collaboration with crime laboratories,
110 private vendor laboratories, and companies or organizations that
111 provide genealogy services and information to the public.
112 Investigative genetic genealogy allows law enforcement agencies
113 to generate an investigative lead on an unknown perpetrator. The
114 investigative lead aids law enforcement agencies in determining
115 potential donors of crime scene samples, which can be confirmed
116 or refuted by a crime laboratory for use in legal proceedings.

33-01108-23

20231402__

117 Convictions and exonerations have been aided by the use of
118 investigative genetic genealogy. The same techniques are also
119 used in missing persons and unidentified human remains cases.
120 Investigative genetic genealogy is a valuable tool to solve
121 violent crimes and to hold accountable perpetrators who may
122 otherwise roam freely and undetected in society. Traditional
123 forensic DNA testing attempts to identify the possible donor of
124 a crime scene sample through matches in law enforcement
125 agencies' DNA databases that consist of short tandem repeat DNA
126 databases. The use of investigative genetic genealogy differs
127 from traditional law enforcement agency investigative techniques
128 because it uses advanced DNA testing to develop a single
129 nucleotide polymorphism or a whole genome sequencing profile
130 from the unknown crime scene DNA, which is then uploaded into a
131 public genealogy database and used to locate personal
132 identifying information for possible relatives and ancestors who
133 participate in the databases. Individuals whose names, contact
134 information, or other family associations are available in these
135 databases may, and routinely, have no association with or
136 knowledge of the perpetrator or the crime that a law enforcement
137 agency is investigating. The first publicized use of
138 investigative genetic genealogy involved the Golden State Killer
139 cases in California. The publicity surrounding law enforcement
140 agencies' use of genetic genealogy led individuals, genealogy
141 service providers, genealogical testing companies, and privacy
142 advocates and ethicists to express privacy concerns. Private
143 companies have since strictly limited or precluded law
144 enforcement agency access to genetic genealogy databases due to
145 fear that individuals who are biologically related to a

33-01108-23

20231402__

146 perpetrator but unassociated with the crime may be identified,
147 harassed, and even victimized. Law enforcement agency use of
148 investigative genetic genealogy materials has been restricted to
149 violent crimes and unidentified human remains, and companies
150 employ opt-in features for customers. Failure to properly
151 protect and limit the disclosure of investigative genetic
152 genealogy materials will hinder law enforcement agencies'
153 ability to use this valuable method to solve violent crimes and
154 provide closure to the family members of victims of these
155 heinous acts. Often, unidentified human remains are homicide
156 victims, so protection of investigative genetic genealogy tools
157 and information is equally important in giving names to these
158 decedents as well as to their perpetrators. For the foregoing
159 reasons, the Legislature finds that it is a public necessity
160 that investigative genetic genealogy materials be made
161 confidential and exempt from public records requirements and
162 that such exemption be applied retroactively.

163 Section 3. This act shall take effect July 1, 2023.