

By the Committee on Rules; and Senator Perry

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1                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           119.071, F.S.; defining the term "killing of a minor";  
4           expanding an existing exemption from public records  
5           requirements for certain photographs or video or audio  
6           recordings held by an agency to include photographs  
7           and video and audio recordings held by an agency which  
8           depict or record the killing of a minor, with  
9           exceptions; providing construction; conforming  
10          provisions to changes made by the act; providing  
11          criminal penalties; providing for retroactive  
12          application; providing for future legislative review  
13          and repeal of the exemption; providing for the  
14          reversion of certain provisions if the exemption is  
15          repealed; providing a short title; amending s.  
16          406.135, F.S.; revising the definition of the term  
17          "medical examiner"; defining the term "minor";  
18          creating an exemption from public records requirements  
19          for autopsy reports of minors whose deaths were  
20          related to acts of domestic violence; providing  
21          exceptions; requiring that any viewing, copying, or  
22          other handling of such autopsy reports be under the  
23          direct supervision of the custodian of the record or  
24          his or her designee; requiring that certain surviving  
25          parents of a minor whose death was related to an act  
26          of domestic violence be given notice of petitions to  
27          view or copy the minor's autopsy report and the  
28          opportunity to be present and heard at related  
29          hearings under certain circumstances; providing

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30 criminal penalties; providing construction; providing  
31 for retroactive application; providing for future  
32 legislative review and repeal of the exemption;  
33 providing statements of public necessity; providing an  
34 effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Paragraph (p) of subsection (2) of section  
39 119.071, Florida Statutes, is amended to read:

40 119.071 General exemptions from inspection or copying of  
41 public records.—

42 (2) AGENCY INVESTIGATIONS.—

43 (p)1. As used in this paragraph, the term:

44 a. "Killing of a law enforcement officer who was acting in  
45 accordance with his or her official duties" means all acts or  
46 events that cause or otherwise relate to the death of a law  
47 enforcement officer who was acting in accordance with his or her  
48 official duties, including any related acts or events  
49 immediately preceding or subsequent to the acts or events that  
50 were the proximate cause of death.

51 b. "Killing of a minor" means all acts or events that cause  
52 or otherwise relate to the death of a victim who has not yet  
53 reached 18 years of age at the time of death, including any  
54 related acts or events immediately preceding or subsequent to  
55 the acts or events that were the proximate cause of the death of  
56 a victim younger than 18 years of age; events that depict a  
57 victim younger than 18 years of age being killed; or events that  
58 depict the body of a victim younger than 18 years of age who has

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59 been killed.

60 c. "Killing of a victim of mass violence" means events that  
61 depict either a victim being killed or the body of a victim  
62 killed in an incident in which three or more persons, not  
63 including the perpetrator, are killed by the perpetrator of an  
64 intentional act of violence.

65 2. A photograph or video or audio recording that depicts or  
66 records the killing of a law enforcement officer who was acting  
67 in accordance with his or her official duties, the killing of a  
68 minor, or the killing of a victim of mass violence is  
69 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
70 of the State Constitution, except that a surviving spouse of the  
71 decedent may view and copy any such photograph or video  
72 recording or listen to or copy any such audio recording. If  
73 there is no surviving spouse, the surviving parents shall have  
74 access to such records. If there is no surviving spouse or  
75 parent, the adult children shall have access to such records.  
76 Nothing in this paragraph precludes a surviving spouse, parent,  
77 or adult child of the victim from sharing or publicly releasing  
78 such photograph or video or audio recording.

79 3.a. The deceased's surviving relative, with whom authority  
80 rests to obtain such records, may designate in writing an agent  
81 to obtain such records.

82 b. A local governmental entity, or a state or federal  
83 agency, in furtherance of its official duties, pursuant to a  
84 written request, may view or copy a photograph or video  
85 recording or may listen to or copy an audio recording of the  
86 killing of a law enforcement officer who was acting in  
87 accordance with his or her official duties, the killing of a

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88 minor, or the killing of a victim of mass violence, and, unless  
89 otherwise required in the performance of its duties, the  
90 identity of the deceased shall remain confidential and exempt.

91 c. The custodian of the record, or his or her designee, may  
92 not permit any other person to view or copy such photograph or  
93 video recording or listen to or copy such audio recording  
94 without a court order.

95 4.a. The court, upon a showing of good cause, may issue an  
96 order authorizing any person to view or copy a photograph or  
97 video recording that depicts or records the killing of a law  
98 enforcement officer who was acting in accordance with his or her  
99 official duties, the killing of a minor, or the killing of a  
100 victim of mass violence, or to listen to or copy an audio  
101 recording that depicts or records the killing of a law  
102 enforcement officer who was acting in accordance with his or her  
103 official duties, the killing of a minor, or the killing of a  
104 victim of mass violence, and may prescribe any restrictions or  
105 stipulations that the court deems appropriate.

106 b. In determining good cause, the court shall consider:  
107 (I) Whether such disclosure is necessary for the public  
108 evaluation of governmental performance;

109 (II) The seriousness of the intrusion into the family's  
110 right to privacy and whether such disclosure is the least  
111 intrusive means available; and

112 (III) The availability of similar information in other  
113 public records, regardless of form.

114 c. In all cases, the viewing, copying, listening to, or  
115 other handling of a photograph or video or audio recording that  
116 depicts or records the killing of a law enforcement officer who

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117 was acting in accordance with his or her official duties, the  
118 killling of a minor, or the killing of a victim of mass violence  
119 must be under the direct supervision of the custodian of the  
120 record or his or her designee.

121 5. A surviving spouse shall be given reasonable notice of a  
122 petition filed with the court to view or copy a photograph or  
123 video recording that depicts or records the killing of a law  
124 enforcement officer who was acting in accordance with his or her  
125 official duties, the killing of a minor, or the killing of a  
126 victim of mass violence, or to listen to or copy any such audio  
127 recording, a copy of such petition, and reasonable notice of the  
128 opportunity to be present and heard at any hearing on the  
129 matter. If there is no surviving spouse, such notice must be  
130 given to the parents of the deceased and, if the deceased has no  
131 surviving parent, to the adult children of the deceased.

132 6.a. Any custodian of a photograph or video or audio  
133 recording that depicts or records the killing of a law  
134 enforcement officer who was acting in accordance with his or her  
135 official duties, the killing of a minor, or the killing of a  
136 victim of mass violence who willfully and knowingly violates  
137 this paragraph commits a felony of the third degree, punishable  
138 as provided in s. 775.082, s. 775.083, or s. 775.084.

139 b. Any person who willfully and knowingly violates a court  
140 order issued pursuant to this paragraph commits a felony of the  
141 third degree, punishable as provided in s. 775.082, s. 775.083,  
142 or s. 775.084.

143 c. A criminal or administrative proceeding is exempt from  
144 this paragraph but, unless otherwise exempted, is subject to all  
145 other provisions of chapter 119; however, this paragraph does

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146 not prohibit a court in a criminal or administrative proceeding  
147 upon good cause shown from restricting or otherwise controlling  
148 the disclosure of a killing, crime scene, or similar photograph  
149 or video or audio recording in the manner prescribed in this  
150 paragraph.

151 7. The exemption in this paragraph shall be given  
152 retroactive application and shall apply to all photographs or  
153 video or audio recordings that depict or record the killing of a  
154 law enforcement officer who was acting in accordance with his or  
155 her official duties, the killing of a minor, or the killing of a  
156 victim of mass violence, regardless of whether the killing of  
157 the person occurred before, on, or after May 23, 2019. However,  
158 nothing in this paragraph is intended to, nor may be construed  
159 to, overturn or abrogate or alter any existing orders duly  
160 entered into by any court of this state, as of the effective  
161 date of this act, which restrict or limit access to any  
162 photographs or video or audio recordings that depict or record  
163 the killing of a law enforcement officer who was acting in  
164 accordance with his or her official duties, the killing of a  
165 minor, or the killing of a victim of mass violence.

166 8. This paragraph applies only to such photographs and  
167 video and audio recordings held by an agency.

168 9.a. This paragraph is subject to the Open Government  
169 Sunset Review Act in accordance with s. 119.15 and shall stand  
170 repealed on October 2, 2024, unless reviewed and saved from  
171 repeal through reenactment by the Legislature.

172 b. The expansion of the public records exemption in this  
173 paragraph to prevent the public disclosure of a photograph or  
174 video or audio recording that depicts or records the killing of

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175 a minor is subject to the Open Government Sunset Review Act in  
176 accordance with s. 119.15 and shall stand repealed on October 2,  
177 2028, unless reviewed and saved from repeal through reenactment  
178 by the Legislature. If the expansion of the exemption is not  
179 saved from repeal, this paragraph shall revert to that in effect  
180 1 day before the effective date of this act, except that any  
181 amendments to this subsection other than by this act shall be  
182 preserved and continue to operate to the extent that such  
183 amendments are not dependent upon the portions of this  
184 subsection which expire pursuant to this paragraph.

185 Section 2. Section 3 of this act may be cited as the "Rex  
186 and Brody Act."

187 Section 3. Section 406.135, Florida Statutes, is amended to  
188 read:

189 406.135 Autopsies; confidentiality of photographs and video  
190 and audio recordings; confidentiality of reports of minor  
191 victims of domestic violence; exemption.-

192 (1) As used in ~~For the purpose of~~ this section, the term:

193 (a) "Medical examiner" means any district medical examiner,  
194 associate medical examiner, or substitute medical examiner  
195 acting pursuant to this chapter, as well as any employee,  
196 deputy, or agent of a medical examiner or any other person who  
197 may obtain possession of a report, photograph, or audio or video  
198 recording of an autopsy in the course of assisting a medical  
199 examiner in the performance of his or her official duties.

200 (b) "Minor" means a person younger than 18 years of age who  
201 has not had the disability of nonage removed pursuant to s.  
202 743.01 or s. 743.015.

203 (2) (a) A photograph or video or audio recording of an

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204 autopsy held by a medical examiner is confidential and exempt  
205 from s. 119.07(1) and s. 24(a), Art. I of the State  
206 Constitution, except that a surviving spouse may view and copy a  
207 photograph or video recording or listen to or copy an audio  
208 recording of the deceased spouse's autopsy. If there is no  
209 surviving spouse, then the surviving parents shall have access  
210 to such records. If there is no surviving spouse or parent, then  
211 an adult child shall have access to such records.

212 (b) An autopsy report of a minor whose death was related to  
213 an act of domestic violence as defined in s. 741.28 held by a  
214 medical examiner is confidential and exempt from s. 119.07(1)  
215 and s. 24(a), Art. I of the State Constitution, except that a  
216 surviving parent of the deceased minor may view and copy the  
217 report if the surviving parent did not commit the act of  
218 domestic violence which led to the minor's death.

219 (3) (a) The deceased's surviving relative, with whom  
220 authority rests to obtain such records, may designate in writing  
221 an agent to obtain such records.

222 (b) A local governmental entity, or a state or federal  
223 agency, in furtherance of its official duties, pursuant to a  
224 written request, may view or copy a photograph or video  
225 recording of an autopsy or a minor's autopsy report or may  
226 listen to or copy an audio recording of an autopsy, and unless  
227 otherwise required in the performance of official ~~their~~ duties,  
228 the identity of the deceased shall remain confidential and  
229 exempt.

230 (c) The custodian of the record, or his or her designee,  
231 may not permit any other person, except an agent designated in  
232 writing by the deceased's surviving relative with whom authority



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233 rests to obtain such records, to view or copy such photograph,  
234 ~~or~~ video recording, or minor's autopsy report or listen to or  
235 copy an audio recording without a court order.

236 (4) (a) The court, upon a showing of good cause, may issue  
237 an order authorizing any person to view or copy a photograph or  
238 video recording of an autopsy or a minor's autopsy report or to  
239 listen to or copy an audio recording of an autopsy and may  
240 prescribe any restrictions or stipulations that the court deems  
241 appropriate.

242 (b) In determining good cause, the court shall consider  
243 whether such disclosure is necessary for the public evaluation  
244 of governmental performance; the seriousness of the intrusion  
245 into the family's right to privacy and whether such disclosure  
246 is the least intrusive means available; and the availability of  
247 similar information in other public records, regardless of form.

248 (c) In all cases, the viewing, copying, listening to, or  
249 other handling of a photograph or video or audio recording of an  
250 autopsy or a minor's autopsy report must be under the direct  
251 supervision of the custodian of the record or his or her  
252 designee.

253 (5) (a) A surviving spouse must ~~shall~~ be given reasonable  
254 notice of a petition filed with the court to view or copy a  
255 photograph or video recording of an autopsy or a petition to  
256 listen to or copy an audio recording, a copy of such petition,  
257 and reasonable notice of the opportunity to be present and heard  
258 at any hearing on the matter. If there is no surviving spouse,  
259 then such notice must be given to the parents of the deceased,  
260 and if there is ~~the deceased has~~ no living parent, then to the  
261 adult children of the deceased.

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262 (b) For an autopsy report of a minor whose death was  
263 related to an act of domestic violence as defined in s. 741.28,  
264 any surviving parent who did not commit the act of domestic  
265 violence which led to the minor's death must be given reasonable  
266 notice of a petition filed with the court to view or copy the  
267 report, a copy of such petition, and reasonable notice of the  
268 opportunity to be present and heard at any hearing on the  
269 matter.

270 (6) (a) Any custodian of a photograph or video or audio  
271 recording of an autopsy or a minor's autopsy report who  
272 willfully and knowingly violates this section commits a felony  
273 of the third degree, punishable as provided in s. 775.082, s.  
274 775.083, or s. 775.084.

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

279 (7) A criminal or administrative proceeding is exempt from  
280 this section, ~~but unless otherwise exempted,~~ is subject to all  
281 other provisions of chapter 119 unless otherwise exempted.  
282 ~~provided however that~~ This section does not prohibit a court in  
283 a criminal or administrative proceeding upon good cause shown  
284 from restricting or otherwise controlling the disclosure of an  
285 autopsy, crime scene, or similar report, photograph, or video or  
286 audio recording ~~recordings~~ in the manner prescribed herein.

287 (8) The exemptions in this section ~~This exemption~~ shall be  
288 given retroactive application.

289 (9) This section is subject to the Open Government Sunset  
290 Review Act in accordance with s. 119.15 and shall stand repealed

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291 on October 2, 2028, unless reviewed and saved from repeal  
292 through reenactment by the Legislature.

293 Section 4. (1)(a) The Legislature finds that it is a public  
294 necessity that photographs and video and audio recordings that  
295 depict or record the killing of a minor be made confidential and  
296 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
297 Article I of the State Constitution. The Legislature finds that  
298 photographs and video and audio recordings that depict or record  
299 the killing of a minor render a graphic and often disturbing  
300 visual or auditory representation of the deceased. Such  
301 photographs and video and audio recordings provide a view of the  
302 deceased in the final moments of life, in which they are often  
303 bruised, bloodied, broken, with bullet wounds or other wounds,  
304 lacerated, dismembered, or decapitated. As such, photographs and  
305 video and audio recordings that depict or record the killing of  
306 a minor are highly sensitive representations of the deceased  
307 which, if heard, viewed, copied, or publicized, could result in  
308 trauma, sorrow, humiliation, or emotional injury to the  
309 immediate family of the deceased and detract from the memory of  
310 the deceased. The Legislature recognizes that the existence of  
311 the Internet and the proliferation of personal computers and  
312 cellular telephones throughout the world encourages and promotes  
313 the wide dissemination of such photographs and video and audio  
314 recordings 24 hours a day and that widespread unauthorized  
315 dissemination of such photographs and video and audio recordings  
316 would subject the immediate family of the deceased to continuous  
317 injury.

318 (b) In addition to the emotional and mental injury that  
319 these photographs and video and audio recordings may cause

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320 family members, the Legislature also finds that dissemination of  
321 photographs and video and audio recordings that depict or record  
322 the killing of a minor is harmful to the public. The Legislature  
323 is concerned that the release of these photographs and video and  
324 audio recordings may educe violent acts by persons who have a  
325 mental illness or who are morally corrupt.

326 (c) The Legislature further finds that other types of  
327 information, such as crime scene reports, continue to be  
328 available which are less intrusive and injurious to the  
329 immediate family of the deceased and continue to provide for  
330 public oversight. The Legislature also finds that the exemption  
331 provided in this act should be given retroactive application  
332 because it is remedial in nature.

333 (2) The Legislature finds that it is a public necessity  
334 that autopsy reports of minors whose deaths were related to acts  
335 of domestic violence be made confidential and exempt from s.  
336 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
337 State Constitution. The Legislature finds that autopsy reports  
338 describe the deceased in a graphic and often disturbing fashion  
339 and that autopsy reports of minors whose deaths were related to  
340 acts of domestic violence may describe the deceased nude,  
341 bruised, bloodied, broken, with bullet or other wounds, cut  
342 open, dismembered, or decapitated. As such, these reports often  
343 contain highly sensitive descriptions of the deceased which, if  
344 heard, viewed, copied, or publicized, could result in trauma,  
345 sorrow, humiliation, or emotional injury to the immediate family  
346 and minor friends of the deceased, as well as injury to the  
347 memory of the deceased. The Legislature recognizes that the  
348 existence of the Internet and the proliferation of websites

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349 throughout the world encourages and promotes the wide  
350 dissemination of reports and publications 24 hours a day, and  
351 that widespread unauthorized dissemination of autopsy reports of  
352 minors whose deaths were related to acts of domestic violence  
353 would subject the immediate family and minor friends of the  
354 deceased to continuous injury. The Legislature further finds  
355 that the exemption provided in this act should be given  
356 retroactive application because it is remedial in nature.

357 Section 5. This act shall take effect upon becoming a law.