

House Bill No. 7115

An act relating to a review under the Open Government Sunset Review Act regarding autopsy photographs and video and audio recordings; amending s. 406.135, F.S., which provides an exemption from public records requirements for photographs and video and audio recordings of an autopsy in the custody of a medical examiner; reorganizing the section and making editorial changes; removing the scheduled repeal of the exemption; providing an effective date.

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

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

406.135 Autopsies; confidentiality of photographs and video and audio recordings; exemption.—

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

(2) A photograph or video or audio recording of an autopsy held by in the custody of a medical examiner is confidential and exempt from the requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse may view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse’s autopsy. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records.

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

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

(c) The custodian of the record, or his or her designee, may not permit any other person, except an agent designated in writing by the deceased’s surviving relative with whom authority rests to obtain such records, to view or copy such photograph or video recording or listen to or copy an audio recording without a court order. ~~For the purposes of this section, the term “medical examiner” means any district medical examiner, associate medical examiner, or substitute medical examiner acting pursuant to this chapter, as well~~

~~as any employee, deputy, or agent of a medical examiner or any other person who may obtain possession of a photograph or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties.~~

(4)(2)(a) The court, upon a showing of good cause, 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 and may prescribe any restrictions or stipulations that the court deems appropriate.

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

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

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

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

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

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

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

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

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

Approved by the Governor June 20, 2006.

Filed in Office Secretary of State June 20, 2006.