

CHAPTER 2023-44

Committee Substitute for Senate Bill No. 404

An act relating to public records; amending s. 119.071, F.S.; defining the term “killing of a minor”; creating an exemption from public records requirements for a photograph or video or audio recording of the killing of a minor, with exceptions; providing construction; requiring that any viewing, copying, listening to, or other handling of such photograph or video or audio recording be under the direct supervision of the custodian of the record or his or her designee; requiring that surviving parents of a minor who was killed be given reasonable notice of any petition to view or copy a photograph or video recording, or to listen to or copy any such audio recording, of the killing of the minor; a copy of the petition; and the opportunity to be present and heard at related hearings; providing penalties; providing construction; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing statements of public necessity; providing a short title; amending s. 406.135, F.S.; defining the terms “domestic violence” and “minor”; revising the definition of the term “medical examiner”; creating an exemption from public records requirements for autopsy reports of minors whose deaths were related to acts of domestic violence; providing exceptions; requiring that any viewing, copying, listening to, or other handling of such autopsy reports be under the direct supervision of the custodian of the record or his or her designee; requiring that certain surviving parents of a minor whose death was related to an act of domestic violence be given reasonable notice of any petition to view or copy the minor’s autopsy report, a copy of the petition, and the opportunity to be present and heard at related hearings; providing penalties; providing construction; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

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

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

(2) AGENCY INVESTIGATIONS.—

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

a. “Killing of a law enforcement officer who was acting in accordance with his or her official duties” means all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or

events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

b. “Killing of a minor” means all acts or events that cause or otherwise relate to the death of a victim who has not yet reached the age of 18 at the time of the death, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of the death of a victim under the age of 18, events that depict a victim under the age of 18 being killed, or events that depict the body of a victim under the age of 18 who has been killed.

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

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

b. A photograph or video or audio recording that depicts or records the killing of a minor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving parent of the deceased minor may view and copy any such photograph or video recording or listen to or copy any such audio recording. Nothing in this sub-subparagraph precludes a surviving parent of the victim from sharing or publicly releasing such photograph or video or audio recording.

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

b. Notwithstanding subparagraph 2., 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 the killing of a law enforcement officer who was acting in accordance with his or her official duties, or the killing of a victim of mass violence, or the killing of a minor, and, unless otherwise required in the performance of its 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 to view or copy such photograph or video recording or listen to or copy such audio recording without a court order.

4.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 that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties, ~~or the killing of a victim of mass violence, or the killing of a minor,~~ or to listen to or copy an audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties, ~~or the killing of a victim of mass violence, or the killing of a minor,~~ and may prescribe any restrictions or stipulations that the court deems appropriate.

b. In determining good cause, the court shall consider:

(I) Whether such disclosure is necessary for the public evaluation of governmental performance;

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

(III) 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 that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties, ~~or the killing of a victim of mass violence, or the killing of a minor~~ must be under the direct supervision of the custodian of the record or his or her designee.

5.a. A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, or to listen to or copy any such 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, such notice must be given to the parents of the deceased and, ~~if there is the deceased has no surviving parent,~~ to the adult children of the deceased.

b. A surviving parent must be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a minor or to listen to or copy any such audio recording; a copy of such petition; and reasonable notice of the opportunity to be present and heard at any hearing on the matter.

6.a. Any custodian of a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties, ~~or the killing of a victim of mass~~

violence, or the killing of a minor who willfully and knowingly violates this paragraph 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 paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

c. A criminal or administrative proceeding is exempt from this paragraph but, unless otherwise exempted, is subject to all other provisions of chapter 119; however, this paragraph does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording in the manner prescribed in this paragraph.

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

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

9. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that photographs and video and audio recordings that depict or record the killing of a minor be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution and that such exemption be applied retroactively. The Legislature finds that photographs and video and audio recordings that depict or record the killing of a minor render a graphic and often disturbing visual or aural representation of the deceased. Such photographs and video and audio recordings provide a view of the deceased in the final moments of life, in which they are often bruised, bloodied, broken, with bullet wounds or other wounds, lacerated, dismembered, or decapitated. As such, photographs and video and audio recordings that depict or record the killing of a minor are highly sensitive representations of the deceased which, if heard, viewed, copied, or publicized, could

result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased. The Legislature recognizes that the existence of the Internet and the proliferation of personal computers and cellular telephones throughout the world encourages and promotes the wide dissemination of such photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of such photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury.

(2) In addition to the emotional and mental injury that these photographs and video and audio recordings may cause family members, the Legislature is also concerned that dissemination of photographs and video and audio recordings that depict or record the killing of a minor is harmful to the public. The Legislature is concerned that the release of these photographs and video and audio recordings may educe violent acts by persons who have a mental illness or who are morally corrupt.

Section 3. Sections 4 and 5 of this act may be cited as the “Rex and Brody Act.”

Section 4. Section 406.135, Florida Statutes, is amended to read:

406.135 Autopsies; confidentiality of photographs and video and audio recordings; confidentiality of reports of minor victims of domestic violence; exemption.—

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

(a) “Domestic violence” has the same meaning as in s. 741.28.

(b) “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 report, 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.

(c) “Minor” means a person younger than 18 years of age who has not had the disability of nonage removed pursuant to s. 743.01 or s. 743.015.

(2)(a) A photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from 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.

(b) An autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a

surviving parent of the deceased minor may view and copy the autopsy report if the surviving parent did not commit the act of domestic violence which led to the minor's death.

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

(b) Notwithstanding subsection (2), a local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may:

1. View or copy a photograph or video recording or may listen to or copy an audio recording of an autopsy; and

2. View or copy an autopsy report of a minor whose death was related to an act of domestic violence.

Unless otherwise required in the performance of official ~~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 an autopsy report of a minor whose death was related to an act of domestic violence or a such photograph or video recording of an autopsy or listen to or copy an audio recording of an autopsy without a court order.

(4)(a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy an autopsy report of a minor whose death was related to an act of domestic violence or 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 an autopsy report of a minor whose death was related to an act of domestic violence or 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)(a) A surviving spouse ~~must~~ 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, and if there is the deceased has no living parent, then to the adult children of the deceased.

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

(6)(a) Any custodian of an autopsy report of a minor whose death was related to an act of domestic violence or 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) A criminal or administrative proceeding is exempt from this section, but ~~unless otherwise exempted~~, is subject to all other provisions of chapter 119 ~~unless otherwise exempted~~, ~~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 report, photograph, or video or audio recording recordings in the manner prescribed herein.

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

(9) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 5. The Legislature finds that it is a public necessity that autopsy reports of minors whose deaths were related to acts of domestic violence be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that autopsy reports describe the deceased in a graphic and often disturbing fashion and that autopsy reports of minors whose deaths were related to acts of domestic violence may describe the deceased nude, bruised, bloodied, broken, with bullet wounds or other wounds, lacerated, dismembered, or decapitated. As such, these reports often contain highly sensitive descriptions of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family and minor friends of the deceased, as well as injury to the memory of the deceased. The Legislature recognizes that the existence of the Internet and

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

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor May 11, 2023.

Filed in Office Secretary of State May 11, 2023.