

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 529 Pub. Rec./Photographs, Recordings, and Reports of Autopsies of Suicide Victims

SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Trabulsy and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics, Elections & Open Government Subcommittee	16 Y, 0 N, As CS	Rando	Toliver
2) Health & Human Services Committee	21 Y, 0 N	Guzzo	Calamas
3) State Affairs Committee	20 Y, 0 N	Rando	Williamson

SUMMARY ANALYSIS

Current law provides that photographs, videos, and audio recordings held by an agency that depict or record the following incidents are confidential and exempt from public record requirements:

- The killing of a law enforcement officer acting in accordance with his or her official duties.
- The killing of a victim of mass violence.
- The killing of a minor.

Additionally, photographs, videos, and audio recordings of an autopsy held by a medical examiner are confidential and exempt from public record requirements. The autopsy report of a minor whose death was related to an act of domestic violence is confidential and exempt and may only be released to a surviving parent if he or she did not commit the act of domestic violence.

In all other circumstances, the surviving spouse — or in the case of a minor, any surviving parent — of the deceased may view, listen to, and copy such records. If there is no surviving spouse, the surviving parents must have access to such confidential and exempt records, and if there is no surviving spouse or parent, then the adult children must have access. Current law permits a court to grant a person authorization to access such confidential and exempt records, and allows for the disclosure of such records to a federal, state, or local agency, if disclosure is in furtherance of that agency's official duties.

The bill expands current public record exemptions to include certain information related to victims of suicide. The bill provides that photographs, videos, and audio recordings held by an agency that depict the suicide of a person are confidential and exempt from public record requirements. The bill also provides that the autopsy report of a person whose manner of death was suicide, held by a medical examiner, is confidential and exempt. The bill allows for disclosure of such confidential and exempt records to a surviving spouse of the deceased. If there is no surviving spouse, the surviving parents must have access, and if there is no surviving spouse or parent, then the surviving adult children and siblings must have access.

The bill provides for retroactive application of the expanded public record exemptions. It also provides the public record exemptions are subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have an insignificant negative fiscal impact on state and local governments.

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 record exemption. The bill expands public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for exemption² from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.³

The Florida Statutes also address the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.⁴ Furthermore, the Open Government Sunset Review Act⁵ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.⁷

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁸

Confidentiality of Photographs, Recordings, and Autopsy Reports

Current law provides that a photograph, video recording, or audio recording that depicts or records the following is confidential and exempt⁹ from public record requirements:

- The killing of a law enforcement officer acting in accordance with his or her official duties.
- The killing of a victim of mass violence.
- The killing of a minor.¹⁰

¹ Article I, s. 24(a), FLA. CONST.

² A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. *See* s. 119.011(8), F.S.

³ Article I, s. 24(c), FLA. CONST.

⁴ *See* s. 119.01, F.S.

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ *Id.*

⁸ Section 119.15(3), F.S.

⁹ There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 04-09 (2004).

¹⁰ Section 119.071(2)(p)2.a., F.S.

All photographs, video recordings, and audio recordings of an autopsy held by a medical examiner are also confidential and exempt from public record requirements.¹¹ In addition, the autopsy report of a minor whose death was related to an act of domestic violence is confidential and exempt and may only be released to a surviving parent who did not commit the act of domestic violence.¹²

In all other circumstances, a surviving spouse — or in the case of a minor, any surviving parent — may view, listen to, or copy any such records.¹³ If the deceased has no surviving spouse, the surviving parents must have access to such records, and if there is no surviving spouse or parent, the adult children must have access to the records.¹⁴

A federal, state, or local government agency may make a written request to access or copy such confidential and exempt photographs, recordings, or autopsy reports for the purpose of performing its official duties. The agency must keep the identity of the deceased confidential and exempt, unless disclosure is otherwise required in the performance of its official duties.¹⁵

Any other person wishing to access such confidential and exempt photographs, recordings, or autopsy reports may petition the court for authorization to do so. Upon a showing of good cause, a court may issue an order authorizing any person access to such photographs, recordings, or autopsy reports under the direct supervision of the custodian of the record and may order any appropriate restrictions or stipulations on such access.¹⁶ The court must consider the following factors to determine if there is good cause relating to a request to access the confidential and exempt photographs, recordings, or autopsy reports:

- 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.
- The availability of similar information in other public records.¹⁷

If a petition making such request is filed with the court, the surviving spouse or other family member must be given reasonable notice, a copy of the petition, and have the opportunity to be present and heard at any hearing on the petition.¹⁸

A custodian of a confidential and exempt photograph, recording, or autopsy report who willfully and knowingly violates the provisions of law governing access to these records commits a third-degree felony.¹⁹ Similarly, a person who willfully and knowingly violates a court order regarding such records commits a third-degree felony.²⁰

Effect of the Bill

The bill expands current public record exemptions to include certain information related to victims of suicide. The bill provides that photographs, video recordings, and audio recordings that depict or record the suicide of a person²¹ held by an agency are confidential and exempt from public record

¹¹ Section 406.135(2)(a), F.S.

¹² Section 406.135(2)(b), F.S.

¹³ Section 119.071(2)(p)2.a., F.S.; s. 406.135(2)(a), F.S.

¹⁴ Section 119.071(2)(p)2.a., F.S.; s. 406.135(2)(a), F.S.

¹⁵ Section 119.071(2)(p)3.b., F.S.; s. 406.135(3)(b), F.S.

¹⁶ Section 119.071(2)(p)4.a., F.S.; s. 406.135(4)(a), F.S.

¹⁷ Section 119.071(2)(p)4.b., F.S.; s. 406.135(4)(b), F.S.

¹⁸ Section 119.071(2)(p)5., F.S.; s. 406.135(5)(a), F.S.

¹⁹ Section 119.071(2)(p)6.a., F.S.; s. 406.135(6)(a), F.S. A third-degree felony is punishable by up to five years in prison, or a fine of up to \$5,000. *See ss. 775.082(3)(e) and 775.083(1)(c), F.S.*

²⁰ Section 119.071(2)(p)6.b., F.S.; 406.135(6)(b), F.S.

²¹ The bill defines "suicide of a person" to mean events that depict the suicide of a person, the body of a person whose manner of death was by suicide, or any portion of such person's body.

requirements. It also provides that the autopsy report of a person whose manner of death was suicide, held by a medical examiner, is confidential and exempt.

The bill incorporates the same provisions as current law regarding access to the confidential and exempt records. Specifically, the bill provides that:

- A local government entity or a state or federal agency, pursuant to a written request, may access such confidential and exempt photographs, recordings, and reports.
- The custodian of the such confidential and exempt record, or his or her designee, may not permit any other person to access such records without a court order.
- A person wishing to access such records may petition the court for authorization to do so, in which case the surviving spouse, or other family member, must be given notice.
- The court, upon showing of good cause, may issue an order authorizing any person to view or copy such records. The custodian of such confidential and exempt records, or his or her designee, must directly supervise anyone who accesses such records.
- Any custodian of such records who willfully or knowingly violates the provisions of the bill regarding access to the confidential and exempt photographs, recordings, and reports, and any person who violates a court order issued pursuant to the provisions of the bill commits a third-degree felony.

The bill provides that a surviving spouse of the deceased whose manner of death was by suicide may access any confidential and exempt photograph, recording, or autopsy report. If the deceased has no surviving spouse, then the surviving parents must have access to such records, and if there is no surviving spouse or parent, the adult children and siblings must have access to the records. The bill further provides that the deceased's surviving relative granted authority to access such records may designate in writing an agent to access the records.

The bill provides for retroactive application of the expanded public record exemptions. The public record exemptions are subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2029, unless reviewed and saved from repeal by the Legislature. The bill also provides the constitutionally required public necessity statement.²²

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a public necessity statement.

Section 3: Amends s. 406.135, F.S., relating to autopsies; confidentiality of photographs and video and audio recordings; exemptions.

Section 4: Provides a public necessity statement.

Section 5: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

²² Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant negative fiscal impact on state and local agencies that are custodians of the confidential and exempt photographs, recordings, or autopsy reports relating to the suicide of a person, as staff responsible for complying with public record requests may require training related to the newly-created public record exemptions. However, any additional costs will likely be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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 record exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill expands current public record exemptions; thus, it includes the required public necessity statements. The public necessity statement regarding photographs or video or audio recordings of a suicide of a person states that the Legislature finds, in part, that based on the highly sensitive representations of the deceased in such photographs or recordings, the release and publication of such materials could cause trauma, humiliation, and emotional injury to the immediate family of the deceased. Furthermore, the Legislature finds that the release of such photographs and video and audio recordings may cause persons who have a mental illness or who are experiencing severe depression to consider suicide. The public necessity statement regarding an autopsy report of a victim of suicide states that the Legislature finds, in part, that based on the graphic and sensitive nature of autopsy reports of a person whose manner of death was by suicide, the release and publication of such reports could cause trauma, humiliation, and emotional injury to the immediate family of the deceased.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands current public record exemptions for photographs, recordings, and autopsy reports to

include such information concerning the suicide of a person, which does not appear broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Ethics, Elections & Open Government Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required that the surviving spouse of a victim of suicide, or other specified family member if there is no surviving spouse, be given notice when a person files a petition with a court requesting to view or copy records exempted under the bill. Additionally, the surviving spouse, or other family member, must be given a copy of the petition and an opportunity to be present and heard at any hearing on the petition.

This analysis is drafted to the committee substitute as approved by the Ethics, Elections & Open Government Subcommittee.