

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 474

INTRODUCER: Senator Grall

SUBJECT: Public Records/Suicide Victims

DATE: December 12, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hall	Tuszynski	CF	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 474 makes confidential and exempt from public disclosure the photograph or video or audio recording that depicts or records the suicide of a person when held by an agency. The bill allows for disclosure to a surviving spouse of the deceased; the surviving parents, if there is no surviving spouse; or the surviving adult children or siblings, if there are no surviving spouse or parents. The bill defines the “suicide of a person” and specifies who may obtain such photographs and recordings and the process for obtaining these materials. The bill gives retroactive application of the exemption.

The bill amends s. 119.071(2)(p), F.S., to conform to the expanded exemption for photographs or video or audio recordings that depict the suicide of a person. Specifically:

- Certain government entities may access such photographs or video or audio recordings in furtherance of their official duties;
- The court, upon showing of good cause, may issue an order authorizing any person to view or copy such photographs or video or audio recordings;
- The record custodian in control of photographs or video or audio recordings, or his or her designee, must directly supervise anyone who views, copies, or handles such; and
- Any custodian or photographs or video or audio recordings that depict the suicide of a person who willfully and knowingly violates the provisions in the section and any person who violates a court order issued pursuant to the section, commits a third degree felony.

The bill gives retroactive application to the exemption for photographs or video or audio recordings that depict the suicide of a person.

The bill also makes confidential and exempt from public inspection and copying requirements an autopsy report of a person whose manner of death was suicide held by a medical examiner. The bill allows for disclosure to a surviving spouse of the deceased; the surviving parents, if there is

no surviving spouse; or the surviving adult children or siblings, if there are no surviving spouse or parents. The bill gives retroactive application of the exemption.

The bill amends s. 406.135, F.S., to conform to the expanded exemption for autopsy reports of a person whose manner of death was suicide. Specifically:

- Certain government entities may access such reports in furtherance of their official duties;
- The custodian of record, or his or her designee, may not permit any other person, except an authorized designated agent, to view or copy an autopsy report of a person whose manner of death was suicide;
- A court may use its discretion to authorize the disclosure of such reports; and
- Any person who willfully and knowingly violates a court order regarding the disclosure of these reports, and any custodian who willfully and knowingly discloses these reports in violation of the law, are subject to a third degree felony.

The bill makes findings that the new exemptions from public records disclosure for photographs or video or audio recordings that depict the suicide of a person and for an autopsy report of a person whose manner of death was suicide are a public necessity as required by the Florida Constitution. Two-third vote of both the House and the Senate is required for final passage.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless reviewed and reenacted by the Legislature.

There is no anticipated fiscal impact on state or local governments.

The bill is effective upon becoming law.

II. Present Situation:

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, Ch. 119,

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photography, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exemptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions continue by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary. An exemption serves an identifiable public purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁹
- The release of sensitive personal information would be defamatory or would jeopardize an individual’s safety. However, if this public purpose is cited as the basis of the exemption, only personal identifying information is exempt;²⁰ or
- It protects trade or business secrets.²¹

¹¹ See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.; Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²² In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage is required.²³ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁴

Exemptions related to Sensitive Photos Videos, or Audio Recordings of Deaths

Autopsy Photographs, Videos, or Audio Depictions

Section 406.135, F.S., makes confidential and exempt a photograph, video, or audio recording of an autopsy held by a medical examiner. It does not limit the disclosure of any written autopsy report. There is an exception which allows for a surviving spouse to view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse's autopsy.²⁵ If there is no surviving spouse, the surviving parent must have access to such records.²⁶ If there is no surviving spouse and no surviving parent, then an adult child is required to have access to such records.²⁷ Current law also allows for the disclosure to a local, state, or federal agency if it is in furtherance of its official duties.²⁸

The custodian of the record, or his or her designee, may not allow any other person to view or copy such records unless the deceased's surviving relative who has authority to request such records, or his or her designated agent, grants permission to view or copy such records.²⁹

Upon a showing of good cause, a court may issue an order authorizing any person to view or copy a photograph or video recording, or listen to, or copy any audio recording of an autopsy.³⁰

²² Section 119.15(6)(a), F.S.; The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²³ See generally s. 119.15, F.S.

²⁴ Section 119.15(7), F.S.

²⁵ Section 406.135(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 406.135(3)(b), F.S.

²⁹ Section 406.135(3)(c), F.S.

³⁰ Section 406.135(4)(a), F.S.

The court may impose any restrictions or stipulations that it deems appropriate.³¹ The court must consider three factors when determining whether good cause exists, including:

- 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.³²

Any handling of photographs, video, or audio recordings of an autopsy must be under the direct supervision of the custodian of record or his or her designee.³³

The surviving spouse, surviving parent, or adult children of the deceased, as appropriate, must be given:

- Reasonable notice of a petition filed with the court to view or copy a photograph or video recording, or listen to or copy an audio recording of an autopsy;
- A copy of such petition; and
- Reasonable notice of the opportunity to be present and hearing at any hearing.³⁴

A custodian of a photograph, video, or audio recording of an autopsy who willfully and knowingly violates these provisions commits a felony of the third degree.³⁵ Any person who willfully and knowingly violates a court order issued after showing good cause to view or copy a photograph or video, or listen to or copy an audio recording of an autopsy commits a felony of the third degree.³⁶

A criminal or administrative proceeding is exempt from s. 406.135, F.S., but is subject to all the provisions of Ch. 119, F.S., unless otherwise exempted.³⁷ A court in a criminal or administrative proceeding, however, may, upon a showing of good cause, restrict or otherwise control the disclosure of an autopsy, crime scene, or similar photograph, video, or audio recording.³⁸

The exemption under s. 406.135, F.S. is given retroactive application.³⁹

³¹ *Id.*

³² Section 406.135(4)(b), F.S.

³³ Section 406.135(5)(c), F.S.

³⁴ Section 406.135(5), F.S.

³⁵ Section 406.135(6)(a), F.S.; A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.

³⁶ Section 406.135(6)(b), F.S.

³⁷ Section 406.135(7), F.S.

³⁸ *Id.*

³⁹ Section 406.135(8), F.S.

Killing of a Law Enforcement Officer, a Minor, and Mass Killings

Section 119.071(2)(p), F.S., makes 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,⁴⁰ the killing of a minor,⁴¹ and the killing of a victim of mass violence⁴² confidential and exempt from public records requirements. Similar to the above described public records exemption related to autopsies, 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 must have access to such records, and if there is no surviving spouse or parent, then the adult children must have access to such records.⁴³

Additionally, access may be provided to the photograph or video or audio recordings by a court in the same circumstances as described above for autopsies.⁴⁴

As with the exemption related to autopsies, this exemption applies retroactively and 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, 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, 2019.⁴⁵

There is currently no exemption for photographs or video or audio recordings related to the suicide of a person.

⁴⁰ Section 119.071(2)(p)1.a., F.S., defines “killing of a law enforcement officer who was acting in accordance with his or her official duties” to mean 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.

⁴¹ Section 119.071(2)(p)1.b., F.S., defines the “killing of a minor” to mean 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.

⁴² Section 119.071(2)(p)1.c., F.S., defines “killing of a victim of mass violence” to mean 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.

⁴³ Section 119.071(2)(p)2., F.S.

⁴⁴ See s. 119.071(2)(p)4.-6., F.S.

⁴⁵ Section 119.071(2)(p)7., F.S.; However, the provision further states that it is not intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any Florida court, as of the effective date of the 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.

Suicide

Suicide is one of the leading causes of death in the United States.⁴⁶ In 2021, 48,183 people died by suicide in the United States equating to 1 death every 11 minutes.⁴⁷ In 2022, suicide rates increased, with an estimated 49,449 people dying by suicide.⁴⁸ This is 3 percent higher than 2021 and the highest rate of suicide since 1941.⁴⁹

In 2022, Florida's suicide rates were higher than any of the last four years.⁵⁰ Provisional data shows Florida had a rate of 15.8 per 100,000 people dying by suicide. This is a slight increase from 2021's suicide rate of 15.4.⁵¹ As a result, suicide is on the list of 10 leading causes of death in Florida.⁵²

The largest increase in suicide deaths were among older adults. Suicide deaths have increased by nearly 7 percent in people ages 45 to 64 and more than 8 percent in people 65 and older.⁵³ Additionally, suicide deaths for adults aged 25 to 44 have increased by 1 percent.⁵⁴

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(2), F.S., to make a photograph or video or audio recording that depicts the suicide of a person confidential and exempt from public disclosure when held by an agency.

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 suicide, or any portion of such person's body.

Amends s. 119.071(2)(p), F.S., to conform to the expanded exemption for photographs or video or audio recordings that depict the suicide of a person. Specifically:

- Certain government entities may access such photographs or video or audio recordings in furtherance of their official duties;
- The court, upon showing of good cause, may issue an order authorizing any person to view or copy such photographs or video or audio recordings;
- The record custodian in control of photographs or video or audio recordings, or his or her designee, must directly supervise anyone who views, copies, or handles such;

⁴⁶ Centers for Disease Control and Prevention, Suicide Prevention, *Suicide Data and Statistics*, available at: <https://www.cdc.gov/suicide/suicide-data-statistics.html> (last visited Dec. 1, 2023).

⁴⁷ *Id.*

⁴⁸ ABC News Go, *Number of Suicides in the U.S. in 2022 Reaches Record Level: CDC*, available at: <https://abcnews.go.com/Health/number-suicides-us-2022-reaches-record-level-cdc/story?id=105204012#:~:text=The%20suicide%20rate%20increased%20by,1941%2C%20according%20to%20the%20report.> (last visited Dec. 1, 2023).

⁴⁹ *Id.*

⁵⁰ Fox 13 Tampa Bay, *Higher Suicide Rates Reported in Florida in 2022, CDC Says*, available at: <https://www.fox13news.com/news/higher-suicide-rates-reported-in-florida-in-2022-cdc-says> (last visited Dec. 1, 2023).

⁵¹ Tampa Bay 10, *Deaths by Suicide in Florida Increased in 2022, CDC Data suggests*, available at: <https://www.wtsp.com/article/news/health/florida-suicide-death-rate-cdc-2022-data/67-2e25f0b2-c3d7-4f19-97db-242f2ebe4d2f> (last visited Dec. 1, 2023).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

- Any custodian of photographs or video or audio recordings that depict the suicide of a person who willfully or knowingly violates the provision in the section and any person who violates a court order issued pursuant to the section, commits a third degree felony.

The bill gives retroactive application to the exemption.

The bill provides for repeal of the exemption on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 includes a statement of public necessity as required by the Florida Constitution. The public necessity statement provides that the release of photographs, videos, and audio recordings 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 widespread dissemination of the photographs, videos, and audio recordings through the Internet would subject the immediate family of the deceased to continuous injury.

Section 3 amends s. 406.135, F.S., to make confidential and exempt an autopsy report of a person whose manner of death was suicide held by a medical examiner.⁵⁵ This section allows for the disclosure to the surviving spouse of the deceased; the surviving parent, if there is no surviving spouse; or the surviving adult children and siblings, if there is no surviving spouse or parent.

Amends s. 406.135, F.S., to conform to the expanded exemption for autopsy reports of a person whose manner of death was suicide. Specifically:

- Certain government entities may access such reports in furtherance of their official duties;
- The custodian of the record, or his or her designee, may not permit any other person, except an authorized designated agent, to view or copy an autopsy report of a person whose manner of death was suicide;
- The court may, upon a showing of good cause, issue an order authorizing any person to view or copy an autopsy report of a person whose manner of death was suicide;
- The record custodian in control of an autopsy report of a person whose manner of death was suicide, or his or her designee, must directly supervise anyone who views, copies, or handles the autopsy report;
- Any custodian of an autopsy report of a person whose manner of death was suicide who willfully and knowingly violates the provisions in s. 406.135, F.S., and any person who violates a court order issued pursuant to s. 406.135, F.S., commits a third degree felony.

The bill gives retroactive application to the exemption.

The bill provides for repeal of the exemption on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

⁵⁵ The term “medical examiner” in s. 409.135, F.S., means anyone who serves in the role of a district medical examiner, as well as any employee, deputy, or agent of the medical examiner, or any other person who may obtain possession of a report, photograph, or audio or video recording of an autopsy in the court assisting a medical examiner in the performance of his or her official duties.

Section 4 includes a statement of public necessity as required by the Florida Constitution. The public necessity statements provides that the release of autopsy reports of a person whose manner of death was suicide 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 widespread unauthorized dissemination of such reports would subject the immediate family of the deceased to continuous injury.

Section 5 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for the final passage of a bill creating and expanding an exemption to the public records requirements. This bill enacts a new exemption for autopsy reports of a person whose manner of death was suicide held by a medical examiner, thus, the bill will require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Sections 2 and 4 of the bill contain statements of public necessity for the exemption.

Scope of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the surviving spouse and family members of a person whose manner of death was suicide. This bill exempts only those autopsy reports of persons whose manner of death was suicide. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 119.071 and 406.135 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.