



MEMORANDUM

To: Council Members AGENDA ITEM 8

From: Staff

Date: October 12, 2018 Joint Council Meeting

Subject: Autopsy Records Exemption Legislation - Update and Joint Resolution of Support –
The Honorable Kristin Jacobs, State Representative, District 96.

Introduction

During their October 20, 2017 Joint Meeting, the Councils heard a presentation regarding government response to two separate, recent Florida mass shooting incidents (Orlando Pulse Nightclub and Ft. Lauderdale International Airport). One facet of the presentation involved victim identity. As a result of the presentation and the discussion about protecting victim identities, at least until such time as next of kin can be officially notified, the Councils moved to direct their staff members and attorneys to coordinate an effort to draft proposed legislation to protect certain victim autopsy records from public records disclosure. Representative Jacobs was quick to offer her sponsorship of such a bill. The result of this effort was house Bill 1317 which was introduced by Representative Jacobs during the 2018 Legislative Session (see Attachment A).

Background

House Bill 1317 proposed a limited expansion of Sec. 406.135, *Florida Statutes* to include as a confidential record, exempt from the public records disclosure requirements of Sec. 119.07, *Florida Statutes* and s. 24(a) Art. I of the *Florida Constitution*, “an autopsy report or a related written record that personally identifies the deceased” that is held by a medical examiner. The legislation provided that such records would be confidential and exempt from the public records disclosure requirements for a period of 10 days after the date of death, or immediately upon notification of the death to next of kin by law enforcement personnel. Sec. 406.135, *Florida Statutes* already makes autopsy photograph, audio and video records confidential and exempt from the public records disclosure requirements of Sec. 119.07, *Florida Statutes* and s. 24(a) Art. I of the *Florida Constitution*.

Unfortunately, this legislation was not adopted and did not become law during the 2018 Legislative Session.

Analysis

The proposed legislation is important for the protection of the identity of the deceased victim and their surviving family members. One of the issues that is experienced by governments required to respond to mass shooting incidents involves news media outlets obtaining victim identities and approaching surviving family members before those family members have been notified of the death by law enforcement. The provisions of House Bill 1317 would go a long way toward eliminating this issue. The proposed legislation has been thoroughly vetted with county medical examiner representatives and they support this measure in its current form. It is important to understand that this proposed legislation did not fail to get adopted into law because of any substantive opposition. Rather, it was the victim of a lack of time and the close of the session before it could be moved through the process completely.

Staff believes it may find success in the 2019 Legislative Session with Representative Jacobs' continued sponsorship.

Recommendation

The Treasure Coast and South Florida Regional Planning Councils should jointly adopt Resolution TCSF 18-02 and, with Representative Jacobs' continued support and sponsorship, express their strong desire to move this legislation forward once again in the 2019 Legislative Session (see Attachment B). The Resolution should be transmitted to the Governor, Senate President, House Speaker, and the Legislative Delegation of the seven-county region.

Attachments

1 A bill to be entitled
2 An act relating to public records; amending s.
3 406.135, F.S.; revising the definition of the term
4 "medical examiner"; providing that a legal guardian
5 shall have access, under certain circumstances, to a
6 photograph or video or audio recording of an autopsy
7 held by a medical examiner; providing that a legal
8 guardian shall be given reasonable notice of, a copy
9 of, and reasonable notice of an opportunity to be
10 present and heard at any hearing on a petition to view
11 or make a copy of such photograph or recording under
12 certain circumstances; providing an exemption from
13 public records requirements for a specified time after
14 a medical examiner has completed an autopsy report;
15 providing for future legislative review and repeal of
16 the exemption; providing criminal penalties for any
17 custodian of an autopsy report or a certain record who
18 willfully and knowingly violates specified provisions;
19 providing retroactive applicability; providing a
20 statement of public necessity; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsections (1), (2), and (5) of section

26 406.135, Florida Statutes, are amended, present subsections (6)
 27 through (8) of that section are redesignated as (7) through (9),
 28 respectively, present subsections (6) and (8) are amended, and a
 29 new subsection (6) is added to that section, to read:

30 406.135 Autopsies; confidentiality of reports, related
 31 written records, photographs, and video and audio recordings;
 32 exemption.—

33 (1) For the purpose of this section, the term "medical
 34 examiner" means any district medical examiner, associate medical
 35 examiner, or substitute medical examiner acting pursuant to this
 36 chapter, as well as any employee, deputy, or agent of a medical
 37 examiner or any other person who may obtain possession of an
 38 autopsy report or a related written record that personally
 39 identifies the deceased, or a photograph or audio or video
 40 recording of an autopsy, in the course of assisting a medical
 41 examiner in the performance of his or her official duties.

42 (2) A photograph or video or audio recording of an autopsy
 43 held by a medical examiner is confidential and exempt from s.
 44 119.07(1) and s. 24(a), Art. I of the State Constitution, except
 45 that a surviving spouse may view and copy a photograph or video
 46 recording or listen to or copy an audio recording of the
 47 deceased spouse's autopsy. If there is no surviving spouse, ~~then~~
 48 the surviving parents or legal guardians shall have access to
 49 such records. If there is no surviving spouse, ~~or~~ parent, or
 50 legal guardian, ~~then~~ an adult child shall have access to such

51 records.

52 (5) A surviving spouse shall be given reasonable notice of
 53 a petition filed with the court to view or copy a photograph or
 54 video recording of an autopsy or a petition to listen to or copy
 55 an audio recording, a copy of such petition, and reasonable
 56 notice of the opportunity to be present and heard at any hearing
 57 on the matter. If there is no surviving spouse, ~~then~~ such notice
 58 must be given to the parents or legal guardians of the deceased,
 59 and if the deceased has no surviving living parent or legal
 60 guardian, ~~then~~ to the adult children of the deceased.

61 (6)(a) An autopsy report or a related written record that
 62 personally identifies the deceased and that is held by a medical
 63 examiner is confidential and exempt from s. 119.07(1) and s.
 64 24(a), Art. I of the State Constitution for 10 days after the
 65 medical examiner has completed the report, except that a
 66 surviving spouse of the deceased may view and copy the records.
 67 If there is no surviving spouse, the surviving parents or legal
 68 guardians of the deceased shall have access to such records. If
 69 there is no surviving spouse, parent, or legal guardian, an
 70 adult child of the deceased shall have access to such records.

71 (b) The exemption in paragraph (a) is subject to the Open
 72 Government Sunset Review Act in accordance with s. 119.15 and
 73 shall stand repealed on October 2, 2023, unless reviewed and
 74 saved from repeal through reenactment by the Legislature.

75 ~~(7)(a)(6)(a)~~ Any custodian of an autopsy report or a

76 related written record that personally identifies the deceased,
 77 or a photograph or video or audio recording of an autopsy, who
 78 willfully and knowingly violates this section commits a felony
 79 of the third degree, punishable as provided in s. 775.082, s.
 80 775.083, or s. 775.084.

81 (b) Any person who willfully and knowingly violates a
 82 court order issued pursuant to this section commits a felony of
 83 the third degree, punishable as provided in s. 775.082, s.
 84 775.083, or s. 775.084.

85 ~~(9)(b)~~ This exemption applies to records held before, on,
 86 or after the effective date of this act shall be given
 87 retroactive application.

88 Section 2. The Legislature finds that it is a public
 89 necessity that autopsy reports and related written records that
 90 personally identify the deceased be made confidential and exempt
 91 from the requirements of s. 119.07(1), Florida Statutes, and s.
 92 24(a), Article I of the State Constitution for 10 days after the
 93 medical examiner has completed the autopsy report. The
 94 Legislature finds that the deceased's family may unexpectedly
 95 encounter new information obtained from an autopsy report or
 96 related written record regarding the death of a loved one which
 97 is published or conveyed by word of mouth, causing the family to
 98 experience trauma, sorrow, humiliation, or emotional injury. The
 99 Legislature finds that, although access delayed is access
 100 denied, the deceased's family should be given a reasonable time

101 to be notified before any highly sensitive autopsy report or
102 related written record that personally identifies the deceased
103 is released to the public. The Legislature further finds that
104 the exemption provided in this act should be given retroactive
105 application because it is remedial in nature.

106 Section 3. This act shall take effect upon becoming a law.



RESOLUTION TCSF #18-02

A JOINT RESOLUTION OF THE SOUTH FLORIDA AND TREASURE COAST REGIONAL PLANNING COUNCILS, REPRESENTING THE LOCAL GOVERNMENTS OF BROWARD, INDIAN RIVER, MARTIN, MIAMI-DADE, MONROE, PALM BEACH, AND ST. LUCIE COUNTIES; SUPPORTING LEGISLATION THAT EXCLUDES CERTAIN AUTOPSY RECORDS FROM STATUTORY AND CONSTITUTIONAL PUBLIC RECORDS DISCLOSURE REQUIREMENTS IN ORDER TO PROTECT THE IDENTITY OF DECEASED PERSONS UNTIL SUCH TIME AS NEXT-OF-KIN HAVE BEEN NOTIFIED BY LAW ENFORCEMENT OR FOR A MAXIMUM PERIOD OF TEN DAYS, WHICHEVER OCCURS FIRST; REQUESTING RENEWED SUPPORT AND SPONSORSHIP OF SUCH LEGISLATION IN THE 2019 LEGISLATIVE SESSION BY REPRESENTATIVE KRISTIN JACOBS, DISTRICT 96; DIRECTING THE REGIONAL PLANNING COUNCILS STAFF TO TRANSMIT THIS RESOLUTION TO THE GOVERNOR OF FLORIDA, THE FLORIDA SENATE PRESIDENT, THE FLORIDA HOUSE SPEAKER, AND THE REGIONS' LEGISLATIVE DELEGATION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the State of Florida has very broad public records laws which are set forth in Chapter 119, *Florida Statutes*, and s. 24(a) Art. I of the *Florida Constitution*; and

WHEREAS, said public records laws currently do not exclude from disclosure autopsy records which identify victims of mass shooting or other criminal or tragic occurrences; and

WHEREAS, the State of Florida has experienced recent events of mass tragedy that resulted in the deaths of multiple victims; and

WHEREAS, autopsy records for such victims are available to anyone including news media outlets, who may, by obtaining such records, learn the identity of deceased victims prior to the official notification of next-of-kin by law enforcement; and

WHEREAS, there is a public necessity for excluding such autopsy records from public disclosure prior to the official notification of next-of-kin in order to protect victims' families from unnecessary trauma, sorrow, humiliation or emotional injury due to informal discovery of the death of their loved one through unofficial sources; and

WHEREAS, in 2017, Regional Planning Councils’ staff and attorneys, working with Representative Kristin Jacobs, District 96 and her staff, drafted House Bill 1317 for the very purpose of excluding autopsy records from public records disclosure for the very reasons stated herein; and

WHEREAS, despite Representative Jacobs’ enthusiastic sponsorship of House Bill 1317 during the 2018 Legislative Session, it was not adopted into law due to a lack of time prior to the close of the session; and

WHEREAS, with Representative Jacobs’ support and sponsorship in the 2019 Legislative Session, there is a new opportunity to see this important legislation adopted into law.

NOW, THEREFORE, BE IT RESOLVED JOINTLY BY THE SOUTH FLORIDA AND TREASURE COAST REGIONAL PLANNING COUNCILS, THAT THEY:

- 1) Endorse and support legislation that excludes certain autopsy records from statutory and constitutional public records disclosure requirements in order to protect the identity of deceased persons until such time as next-of-kin have been notified by law enforcement or for a maximum period of ten days, whichever occurs first; and
- 2) Request support and sponsorship of such legislation in the 2019 legislative session by representative Kristin Jacobs, District 96; and
- 3) With the agreement of Representative Jacobs to proceed as requested, further direct the regional planning councils’ staff to transmit this Resolution to the Governor of Florida, the Florida Senate President, the Florida House Speaker, and the regions’ Legislative Delegation.

THIS RESOLUTION shall take effect immediately upon adoption hereof.

DULY ADOPTED by the South Florida and Treasure Coast Regional Planning Councils this 12th day of October, 2018.

Frank Caplan
Chair, SFRPC

Reece J. Parrish
Chair, TCRPC