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CS/HB 1327

2023 Legislature

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 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing definitions; providing an
 4 exemption from public records requirements for
 5 investigative genetic genealogy information and
 6 materials; authorizing the disclosure of such
 7 information and materials in certain circumstances;
 8 providing retroactive application; providing for
 9 future legislative review and repeal of the exemption;
 10 providing a statement of public necessity; providing
 11 an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraph (r) is added to subsection (2) of
 16 section 119.071, Florida Statutes, to read:

17 119.071 General exemptions from inspection or copying of
 18 public records.—

19 (2) AGENCY INVESTIGATIONS.—

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

21 a. "DNA record" means all information associated with the
 22 collection and analysis of a person's DNA sample, including the
 23 distinguishing characteristics collectively referred to as a DNA
 24 profile, and includes a single nucleotide polymorphism and a
 25 whole genome sequencing DNA profile.

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26 b. "Genetic genealogy" means the use of DNA testing in
 27 combination with traditional genealogical methods to infer
 28 relationships between persons and determine ancestry.

29 c. "Investigative genetic genealogy" means the application
 30 of genetic genealogy and law enforcement investigative
 31 techniques to develop investigative leads in unsolved violent
 32 crimes and provide investigative leads as to the identity of
 33 unidentified human remains and living unidentified missing
 34 persons.

35 d. "Investigative genetic genealogy information and
 36 materials" means the information, records, and DNA records
 37 created or collected by or on behalf of a law enforcement agency
 38 conducting investigative genetic genealogy research, and
 39 includes the names and personal identifying information of
 40 persons identified through the use of genealogy databases,
 41 traditional genealogical methods, or other investigative means.
 42 The term does not include the name or personal identifying
 43 information of:

44 (I) The donor of a biological sample attributable to a
 45 perpetrator; or

46 (II) A person identified through investigative genetic
 47 genealogy who is a witness to or has personal knowledge related
 48 to the crime under investigation.

49 e. "Traditional genealogical methods" means the use of
 50 genealogical databases and historical records to trace the

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51 family lineage of a person.

52 2. Investigative genetic genealogy information and
53 materials are confidential and exempt from s. 119.07(1) and s.
54 24(a), Art. I of the State Constitution.

55 3. Notwithstanding subparagraph 2., a law enforcement
56 agency:

57 a. May disclose investigative genetic genealogy
58 information and materials in furtherance of its official duties
59 and responsibilities or to another governmental agency in the
60 furtherance of its official duties and responsibilities.

61 b. Shall disclose investigative genetic genealogy
62 information and materials pursuant to a court order for
63 furtherance of a criminal prosecution. If a court orders the
64 disclosure of such information and materials, the recipient of
65 the information and materials must maintain the confidential and
66 exempt status of the information and materials and may only
67 publicly disclose the information and materials as necessary for
68 purposes of a criminal prosecution as determined by the court.

69 4. The exemption in this paragraph applies to
70 investigative genetic genealogy information and materials held
71 by an agency before, on, or after July 1, 2023.

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

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76 Section 2. The Legislature finds that it is a public
77 necessity that investigative genetic genealogy information and
78 materials be made confidential and exempt from s. 119.07(1),
79 Florida Statutes, and s. 24(a), Article I of the State
80 Constitution. Investigative genetic genealogy is an advanced
81 investigative tool that uses law enforcement agency
82 investigative resources and traditional genealogical research in
83 collaboration with crime laboratories, private vendor
84 laboratories, and companies and organizations that provide
85 genealogy services and information to the public. Investigative
86 genetic genealogy allows law enforcement to generate
87 investigative leads on unknown perpetrators. Such investigative
88 leads aid law enforcement in determining potential donors of
89 crime scene samples, which can be confirmed or refuted by a
90 crime laboratory for use in legal proceedings. Convictions and
91 exonerations have been aided by the use of investigative genetic
92 genealogy. The same techniques are also used in missing persons
93 and unidentified human remains cases. Investigative genetic
94 genealogy is a valuable tool to solve violent crimes and hold
95 accountable perpetrators who may otherwise roam freely and
96 undetected in society. Traditional forensic DNA testing attempts
97 to identify the possible donor of a crime scene sample through
98 matches in law enforcement DNA databases comprised of short
99 tandem repeat DNA databases. The use of investigative genetic
100 genealogy differs from traditional law enforcement investigative

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101 techniques because it uses advanced DNA testing in order to
102 develop an SNP or a WGS profile from unknown crime scene DNA.
103 Profiles consisting of SNP data from various locations in a
104 genome are made up of letters representing the building blocks
105 of DNA and, depending on the locations tested, may reveal
106 information on physical characteristics, disease predisposition,
107 and susceptibility to environmental factors such as toxins or
108 drugs. A WGS profile represents the entirety of a person's DNA
109 and the traits, health, and ancestry information the DNA
110 contains. Such SNP or WGS profiles are then uploaded into public
111 genealogy databases and used to locate personal identifying
112 information for possible relatives and ancestors who participate
113 in the databases. Persons whose names, contact information, and
114 other family associations are available in these databases
115 routinely have no association with or knowledge of the
116 perpetrator or the crime law enforcement is investigating. The
117 first publicized use of investigative genetic genealogy involved
118 the Golden State Killer case in California. The publicity
119 surrounding law enforcement's use of genetic genealogy led
120 genealogy service providers, genealogical testing companies,
121 privacy advocates, and ethicists to express privacy concerns.
122 Private companies have since strictly limited or precluded law
123 enforcement access to genetic genealogy databases due to fear
124 that persons biologically related to a perpetrator but
125 unassociated with the crime may be identified, harassed, and

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126 | even victimized. Law enforcement use has been restricted to
127 | violent crimes and unidentified human remains, and companies
128 | employ opt-in features for customers. Failure to properly
129 | protect and limit the disclosure of investigative genetic
130 | genealogy materials will hinder the ability of law enforcement
131 | to use investigative genetic genealogy to solve violent crimes
132 | and provide closure to the family members of victims of these
133 | heinous acts. Unidentified human remains are often homicide
134 | victims, so protection of investigative genetic genealogy tools
135 | and information is important in giving names to these victims as
136 | well.

137 | Section 3. This act shall take effect July 1, 2023.