

House Bill 1322 (AS PASSED HOUSE AND SENATE)

By: Representatives Chambers of the 81st, Martin of the 47th, Powell of the 171st, and Teilhet of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 45-16-27 of the Official Code of Georgia Annotated, relating to
2 when inquest to be held, special situations, coroner's fee, issuance of subpoenas for books,
3 records, or papers, cost of copying, and limited disclosure of photographs, so as to provide
4 a short title; to provide for legislative findings; to provide that certain crime scene material
5 shall not be subject to the provisions of Article 4 of Chapter 18 of Title 50 of the Official
6 Code of Georgia Annotated; to provide for release to a victim's next of kin; to provide for
7 judicial action; to provide for notification; to provide for viewing of such material by the
8 press; to provide for applicability; to provide an effective date; to repeal conflicting laws; and
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Meredith Emerson Memorial Privacy Act."

13 **SECTION 2.**

14 The General Assembly finds that photographs or video recordings of certain crime scene
15 photos depict the deceased in graphic and often disturbing fashion. Such photographs or
16 video may depict or describe the deceased nude, grossly dismembered, or decapitated. As
17 such photographs or video recordings are highly sensitive depictions of the deceased which,
18 if viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional
19 injury to the immediate family of the deceased, as well as injury to the memory of the
20 deceased. The legislature finds that the existence of certain publications and the Internet and
21 the proliferation of personal computers throughout the world encourages and promotes the
22 wide dissemination of photographs and video recordings 24 hours a day and that widespread
23 unauthorized dissemination of such images would subject the immediate family of the
24 deceased to continuous injury.

25 **SECTION 3.**

26 Code Section 45-16-27 of the Official Code of Georgia Annotated, relating to when inquest
 27 to be held, special situations, coroner's fee, issuance of subpoenas for books, records, or
 28 papers, cost of copying, and limited disclosure of photographs, is amended by adding a new
 29 subsection to read as follows:

30 "(e)(1) Crime scene photographs and video recordings, including photographs and video
 31 recordings created or produced by a state or local agency or by a perpetrator or suspect
 32 at a crime scene, which depict or describe a deceased person in a state of dismemberment,
 33 decapitation, or similar mutilation including, without limitation, where the deceased
 34 person's genitalia are exposed, shall not be subject to disclosure pursuant to Article 4 of
 35 Chapter 18 of Title 50; provided, however, that this subsection shall not prohibit
 36 disclosure of such material to the deceased's next of kin or to an individual who has
 37 secured a written release from the next of kin. It shall be the responsibility of the next
 38 of kin to show proof of the familial relationship. For purposes of such access, the
 39 deceased's next of kin shall be:

40 (A) The spouse of the deceased if living;

41 (B) If there is no living spouse of the deceased, an adult child of the deceased; or

42 (C) If there is no living spouse or adult child, a parent of the deceased.

43 (2) Subject to the provisions of paragraph (3) of this subsection, in the case of closed
 44 criminal investigations a superior court may order the disclosure of such photographs or
 45 video recordings upon findings in writing that disclosure is in the public interest and
 46 outweighs any privacy interest that may be asserted by the deceased person's next of kin.
 47 In making such determination, the court shall consider whether such disclosure is
 48 necessary for public evaluation of governmental performance, the seriousness of the
 49 intrusion into the family's right to privacy, and whether such disclosure is the least
 50 intrusive means available considering the availability of similar information in other
 51 public records. In any such action, the court shall review the photographs in question in
 52 camera with the custodian of crime scene materials present and may condition any
 53 disclosure on such condition as the court may deem necessary to accommodate the
 54 interests of the parties.

55 (3) Prior to releasing any crime scene material described in paragraph (1) of this
 56 subsection, the custodian of such material shall give the deceased person's next of kin at
 57 least two weeks' notice. No court shall order a disclosure pursuant to paragraph (2) of
 58 this subsection which would disregard or shorten the duration of such notice requirement.

59 (4) The provisions of this subsection shall apply to all undisclosed material which is in
 60 the custody of a state or local agency on the effective date of this subsection and to any
 61 such material which comes into the custody of a state or local agency after such date.

62 (5) This subsection shall not apply to disclosure of crime scene material to counsel
63 representing a convicted defendant in a habeas corpus action pursuant to Chapter 14 of
64 Title 9, on an extraordinary motion for new trial under Code Section 5-5-40 or 5-5-41,
65 or in a federal habeas corpus action under Section 2254 or 2255 of Title 28 of the United
66 States Code for the purpose of preparing to file or litigating such proceedings. Counsel
67 may disclose such materials to his or her client and any expert or investigator assisting
68 counsel but shall not otherwise disseminate such materials, except to the extent they may
69 be necessary exhibits in court proceedings. A request pursuant to this paragraph shall
70 clearly state that such request is being made for the purpose of preparing to file and
71 litigate proceedings enumerated in this paragraph.

72 (6) The director of the Georgia Bureau of Investigation and the Board of Public Safety
73 shall promulgate rules and regulations governing the viewing of materials described in
74 paragraph (1) of this subsection by bona fide credentialed members of the press."

75 **SECTION 4.**

76 This Act shall become effective upon its approval by the Governor or upon its becoming law
77 without such approval.

78 **SECTION 5.**

79 All laws and parts of laws in conflict with this Act are repealed.