

HB 2618 -- CRIME SCENE EVIDENCE

SPONSOR: McGaugh

This bill specifies that crime scene photographs and video recordings, including photographs and video recordings created or produced by a state or local agency or by a perpetrator or suspect at a crime scene, which depict or describe a deceased person in a state of dismemberment, decapitation, or similar mutilation including where the deceased person's genitalia are exposed, are considered closed records and not be subject to disclosure under open records laws. Such material may be disclosed to the decedent's next-of-kin or to an individual who has secured a written release from the next-of-kin. It is the responsibility of the next-of-kin to show proof of the familial relationship.

The bill authorizes a circuit court judge to order the disclosure of such photographs or video records in closed criminal investigations upon findings in writing that disclosure is in the public interest and outweighs any privacy interest that may be asserted by the deceased person's next-of-kin. In making such determination, the court must consider whether disclosure is necessary for public evaluation of governmental performance, the seriousness of the intrusion into the family's right to privacy, and whether disclosure is the least intrusive means available considering the availability of similar information in other public records. In any such action, the court is required to review the photographs or video recordings in question in camera with the custodian of the crime scene materials present and may condition any disclosure on any conditions the court deems necessary to accommodate the interests of the parties.

Prior to releasing any crime scene material, the custodian of the material must give the deceased person's next-of-kin at least two weeks' notice and the court is prohibited from ordering a disclosure which would disregard or shorten the duration of this notice requirement. These provisions apply to all undisclosed material which is in the custody of a state or local agency on the effective date of this section and to any such material which comes into the custody of a state or local agency after such date.

These provisions do not apply to disclosure of crime scene material to counsel representing a convicted defendant in a habeas corpus action, on a motion for new trial, or in a federal habeas corpus action under 28 U.S.C. Section 2254 or 2255 for the purpose of preparing to file or litigating such proceedings. Counsel may disclose these materials to his or her client and any expert or investigator assisting counsel but is prohibited from otherwise disseminating these materials, except to the extent they may be

necessary exhibits in court proceedings.

A request for disclosure must clearly state that the request is being made for the purpose of preparing to file and litigate proceedings enumerated in these provisions.