

HB 163

2011

1 A bill to be entitled
2 An act relating to public records; providing a definition;
3 providing an exemption from public records requirements
4 for photographs and video and audio recordings that depict
5 or record the killing of a person; authorizing access to
6 such photographs or video or audio recordings by specified
7 members of the immediate family of the deceased subject of
8 the photographs or video or audio recordings; providing
9 for access to such records by local governmental entities
10 or state or federal agencies in furtherance of official
11 duties; providing for access pursuant to court order;
12 providing guidelines of the court in issuing an order
13 authorizing such photographs or video or audio recordings
14 to be viewed, copied, or heard; requiring specified notice
15 of a court petition to view or copy such records;
16 providing penalties; exempting criminal or administrative
17 proceedings from the act; providing for retroactive
18 application; providing for future legislative review and
19 repeal of the exemption; providing a finding of public
20 necessity; providing an effective date.

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

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24 Section 1. (1) As used in this section, the term "killing
25 of a person" means all acts or events that cause or otherwise
26 relate to the death of any human being, including any related
27 acts or events immediately preceding or subsequent to the acts
28 or events that were the proximate cause of death.

29 (2) A photograph or video or audio recording that depicts
 30 or records the killing of a person is confidential and exempt
 31 from section 119.07(1), Florida Statutes, and s. 24(a), Art. I
 32 of the State Constitution, except that a surviving spouse of the
 33 decedent may view and copy any such photograph or video
 34 recording or listen to or copy any such audio recording. If
 35 there is no surviving spouse, then the surviving parents shall
 36 have access to such records. If there is no surviving spouse or
 37 parent, then an adult child shall have access to such records.

38 (3) (a) The deceased's surviving relative, with whom
 39 authority rests to obtain such records, may designate in writing
 40 an agent to obtain such records.

41 (b) A local governmental entity, or a state or federal
 42 agency, in furtherance of its official duties, pursuant to a
 43 written request, may view or copy a photograph or video
 44 recording or may listen to or copy an audio recording of the
 45 killing of a person and, unless otherwise required in the
 46 performance of their duties, the identity of the deceased shall
 47 remain confidential and exempt.

48 (c) The custodian of the record, or his or her designee,
 49 may not permit any other person to view or copy such photograph
 50 or video recording or listen to or copy such audio recording
 51 without a court order.

52 (4) (a) The court, upon a showing of good cause, may issue
 53 an order authorizing any person to view or copy a photograph or
 54 video recording that depicts or records the killing of a person
 55 or to listen to or copy an audio recording that depicts or

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56 records the killing of a person and may prescribe any
57 restrictions or stipulations that the court deems appropriate.

58 (b) In determining good cause, the court shall consider:

59 1. Whether such disclosure is necessary for the public
60 evaluation of governmental performance;

61 2. The seriousness of the intrusion into the family's
62 right to privacy and whether such disclosure is the least
63 intrusive means available; and

64 3. The availability of similar information in other public
65 records, regardless of form.

66 (c) In all cases, the viewing, copying, listening to, or
67 other handling of a photograph or video or audio recording that
68 depicts or records the killing of a person must be under the
69 direct supervision of the custodian of the record or his or her
70 designee.

71 (5) A surviving spouse shall be given reasonable notice of
72 a petition filed with the court to view or copy a photograph or
73 video recording that depicts or records the killing of a person
74 or to listen to or copy any such audio recording, a copy of such
75 petition, and reasonable notice of the opportunity to be present
76 and heard at any hearing on the matter. If there is no surviving
77 spouse, then such notice must be given to the parents of the
78 deceased and, if the deceased has no living parent, then to the
79 adult children of the deceased.

80 (6) (a) Any custodian of a photograph or video or audio
81 recording that depicts or records the killing of a person who
82 willfully and knowingly violates this section commits a felony

83 of the third degree, punishable as provided in section 775.082,
 84 section 775.083, or section 775.084, Florida Statutes.

85 (b) Any person who willfully and knowingly violates a
 86 court order issued pursuant to this section commits a felony of
 87 the third degree, punishable as provided in section 775.082,
 88 section 775.083, or section 775.084, Florida Statutes.

89 (c) A criminal or administrative proceeding is exempt from
 90 this section but, unless otherwise exempted, is subject to all
 91 other provisions of chapter 119, Florida Statutes, provided
 92 however that this section does not prohibit a court in a
 93 criminal or administrative proceeding upon good cause shown from
 94 restricting or otherwise controlling the disclosure of a
 95 killing, crime scene, or similar photograph or video or audio
 96 recordings in the manner prescribed herein.

97 (7) This exemption shall be given retroactive application
 98 and shall apply to all photographs or video or audio recordings
 99 that depict or record the killing of a person, regardless of
 100 whether the killing of the person occurred before, on, or after
 101 July 1, 2011.

102 (8) This section is subject to the Open Government Sunset
 103 Review Act in accordance with s. 119.15, Florida Statutes, and
 104 shall stand repealed on October 2, 2016, unless reviewed and
 105 saved from repeal through reenactment by the Legislature.

106 Section 2. The Legislature finds that is a public
 107 necessity that photographs and video and audio recordings that
 108 depict or record the killing of any person be made confidential
 109 and exempt from the requirements of section 119.07(1), Florida
 110 Statutes, and Section 24(a) of Article I of the State

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111 Constitution. The Legislature finds that photographs or video or
112 audio recordings that depict or record the killing of any person
113 render a visual or aural representation of the deceased in
114 graphic and often disturbing fashion. Such photographs or video
115 or audio recordings provide a view of the deceased in the final
116 moments of life, often bruised, bloodied, broken, with bullet
117 wounds or other wounds, cut open, dismembered, or decapitated.
118 As such, photographs or video or audio recordings that depict or
119 record the killing of any person are highly sensitive
120 representations of the deceased which, if heard, viewed, copied
121 or publicized, could result in trauma, sorrow, humiliation, or
122 emotional injury to the immediate family of the deceased, as
123 well as injury to the memory of the deceased. The Legislature
124 recognizes that the existence of the World Wide Web and the
125 proliferation of personal computers throughout the world
126 encourages and promotes the wide dissemination of such
127 photographs and video and audio recordings 24 hours a day and
128 that widespread unauthorized dissemination of photographs and
129 video and audio recordings would subject the immediate family of
130 the deceased to continuous injury. The Legislature further
131 recognizes that there continue to be other types of available
132 information, such as crime scene reports, which are less
133 intrusive and injurious to the immediate family members of the
134 deceased and which continue to provide for public oversight. The
135 Legislature further finds that the exemption provided in this
136 act should be given retroactive application because it is
137 remedial in nature.

138 Section 3. This act shall take effect July 1, 2011.