

By the Committees on Judiciary; and Criminal Justice; and
Senator Bogdanoff

590-04471-11

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1 A bill to be entitled

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

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

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

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30 or events that were the proximate cause of death.

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

40 (3) (a) The deceased's surviving relative, with whom
41 authority rests to obtain such records, may designate in writing
42 any other person to view, copy, or publish such records.

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

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

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

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59 restrictions or stipulations that the court deems appropriate.

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

61 1. Whether such disclosure is necessary for the public
62 evaluation of governmental performance;

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

66 3. The availability of similar information in other public
67 records, regardless of form.

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

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

82 (6) (a) Any custodian of a photograph or video or audio
83 recording that depicts or records the killing of a person who
84 willfully and knowingly violates this section commits a felony
85 of the third degree, punishable as provided in s. 775.082, s.
86 775.083, or s. 775.084, Florida Statutes.

87 (b) Any person who willfully and knowingly violates a court

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88 order issued pursuant to this section commits a felony of the
89 third degree, punishable as provided in s. 775.082, s. 775.083,
90 or s. 775.084, Florida Statutes.

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

99 (7) This exemption shall be given retroactive application
100 and applies to all photographs or video or audio recordings that
101 depict or record the killing of a person, regardless of whether
102 the killing of the person occurred before, on, or after July 1,
103 2011. However, this section does not apply to any order in
104 effect on July 1, 2011, which was duly entered by a court of
105 this state and which restricts or limits access to any
106 photograph or video or audio recording that depicts or records
107 the killing of a person. This section applies only to
108 photographs and video or audio recordings that constitute public
109 records as defined in s. 119.011, Florida Statutes.

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

114 Section 2. The Legislature finds that is a public necessity
115 that photographs and video and audio recordings that depict or
116 record the killing of any person be made confidential and exempt

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117 from the requirements of s. 119.07(1), Florida Statutes, and s.
118 24(a), Article I of the State Constitution. The Legislature
119 finds that photographs or video or audio recordings that depict
120 or record the killing of any person render a visual or aural
121 representation of the deceased in graphic and often disturbing
122 fashion. Such photographs or video or audio recordings provide a
123 view of the deceased in the final moments of life, often
124 bruised, bloodied, broken, with bullet wounds or other wounds,
125 cut open, dismembered, or decapitated. As such, photographs or
126 video or audio recordings that depict or record the killing of
127 any person are highly sensitive representations of the deceased
128 which, if heard, viewed, copied, or publicized, could result in
129 trauma, sorrow, humiliation, or emotional injury to the
130 immediate family of the deceased, as well as injury to the
131 memory of the deceased. The Legislature recognizes that the
132 existence of the World Wide Web and the proliferation of
133 personal computers throughout the world encourages and promotes
134 the wide dissemination of such photographs and video and audio
135 recordings 24 hours a day and that widespread unauthorized
136 dissemination of photographs and video and audio recordings
137 would subject the immediate family of the deceased to continuous
138 injury. The Legislature further recognizes that there continue
139 to be other types of available information, such as crime scene
140 reports, which are less intrusive and injurious to the immediate
141 family members of the deceased and which continue to provide for
142 public oversight. The Legislature further finds that the
143 exemption provided in this act should be given retroactive
144 application, except as provided herein, because it is remedial
145 in nature.

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