



753234

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/01/2016	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 406.136, Florida Statutes, is amended to  
read:

406.136 A photograph or video or audio recording that  
depicts or records the killing of a law enforcement officer who  
was acting in accordance with his or her official duties a  
person.-



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11 (1) As used in this section, the term "killing of a law  
12 enforcement officer who was acting in accordance with his or her  
13 official duties" ~~"killing of a person"~~ means all acts or events  
14 that cause or otherwise relate to the death of a law enforcement  
15 officer who was acting in accordance with his or her official  
16 duties ~~any human being~~, including any related acts or events  
17 immediately preceding or subsequent to the acts or events that  
18 were the proximate cause of death.

19 (2) A photograph or video or audio recording that depicts  
20 or records the killing of a law enforcement officer who was  
21 acting in accordance with his or her official duties ~~a person~~ is  
22 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
23 of the State Constitution, except that a surviving spouse of the  
24 decedent may view and copy any such photograph or video  
25 recording or listen to or copy any such audio recording. If  
26 there is no surviving spouse, then the surviving parents shall  
27 have access to such records. If there is no surviving spouse or  
28 parent, then an adult child shall have access to such records.

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

32 (b) A local governmental entity, or a state or federal  
33 agency, in furtherance of its official duties, pursuant to a  
34 written request, may view or copy a photograph or video  
35 recording or may listen to or copy an audio recording of the  
36 killing of a law enforcement officer who was acting in  
37 accordance with his or her official duties ~~a person~~ and, unless  
38 otherwise required in the performance of their duties, the  
39 identity of the deceased shall remain confidential and exempt.



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

44 (4) (a) The court, upon a showing of good cause, may issue  
45 an order authorizing any person to view or copy a photograph or  
46 video recording that depicts or records the killing of a law  
47 enforcement officer who was acting in accordance with his or her  
48 official duties ~~a person~~ or to listen to or copy an audio  
49 recording that depicts or records the killing of a law  
50 enforcement officer who was acting in accordance with his or her  
51 official duties ~~a person~~ and may prescribe any restrictions or  
52 stipulations that the court deems appropriate.

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

54 1. Whether such disclosure is necessary for the public  
55 evaluation of governmental performance;

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

59 3. The availability of similar information in other public  
60 records, regardless of form.

61 (c) In all cases, the viewing, copying, listening to, or  
62 other handling of a photograph or video or audio recording that  
63 depicts or records the killing of a law enforcement officer who  
64 was acting in accordance with his or her official duties ~~a~~  
65 ~~person~~ must be under the direct supervision of the custodian of  
66 the record or his or her designee.

67 (5) A surviving spouse shall be given reasonable notice of  
68 a petition filed with the court to view or copy a photograph or



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69 video recording that depicts or records the killing of a law  
70 enforcement officer who was acting in accordance with his or her  
71 official duties ~~a person~~ or to listen to or copy any such audio  
72 recording, a copy of such petition, and reasonable notice of the  
73 opportunity to be present and heard at any hearing on the  
74 matter. If there is no surviving spouse, then such notice must  
75 be given to the parents of the deceased and, if the deceased has  
76 no living parent, then to the adult children of the deceased.

77 (6) (a) Any custodian of a photograph or video or audio  
78 recording that depicts or records the killing of a law  
79 enforcement officer who was acting in accordance with his or her  
80 official duties ~~a person~~ who willfully and knowingly violates  
81 this section commits a felony of the third degree, punishable as  
82 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

95 (7) This exemption shall be given retroactive application  
96 and shall apply to all photographs or video or audio recordings  
97 that depict or record the killing of a law enforcement officer



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98 who was acting in accordance with his or her official duties a  
99 ~~person~~, regardless of whether the killing of the person occurred  
100 before, on, or after July 1, 2011. However, nothing herein is  
101 intended to, nor may be construed to, overturn or abrogate or  
102 alter any existing orders duly entered into by any court of this  
103 state, as of the effective date of this act, which restrict or  
104 limit access to any photographs or video or audio recordings  
105 that depict or record the killing of a law enforcement officer  
106 who was acting in accordance with his or her official duties a  
107 ~~person~~.

108 (8) This section only applies to such photographs and video  
109 and audio recordings held by an agency as defined in s. 119.011.

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

114 Section 2. This act shall take effect October 1, 2016.

115  
116 ===== T I T L E A M E N D M E N T =====

117 And the title is amended as follows:

118 Delete everything before the enacting clause  
119 and insert:

120 A bill to be entitled  
121 An act relating to a review under the Open Government  
122 Sunset Review Act; amending s. 406.136, F.S., which  
123 provides an exemption from public records requirements  
124 for a photograph or video or audio recording held by  
125 an agency that depicts or records the killing of a  
126 person; narrowing the exemption to depictions or



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127 recordings of the killing of a law enforcement officer  
128 who was acting in accordance with his or her official  
129 duties; removing the scheduled repeal of the  
130 exemption; providing an effective date.