

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 406.136, F.S.; expanding an exemption from public
 4 records requirements for a photograph or video or
 5 audio recording held by an agency that depicts or
 6 records the killing of a law enforcement officer to
 7 include a photograph or video or audio recording held
 8 by an agency that depicts or records the killing of a
 9 person; providing for future legislative review and
 10 repeal of the exemption; providing a statement of
 11 public necessity; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 406.136, Florida Statutes, is amended
 16 to read:

17 406.136 A photograph or video or audio recording that
 18 depicts or records the killing of a person ~~law enforcement~~
 19 ~~officer who was acting in accordance with his or her official~~
 20 ~~duties.~~—

21 (1) As used in this section, the term "killing of a
 22 person" ~~"killing of a law enforcement officer who was acting in~~
 23 ~~accordance with his or her official duties"~~ means all acts or
 24 events that cause or otherwise relate to the death of any human
 25 being ~~a law enforcement officer who was acting in accordance~~

26 ~~with his or her official duties~~, including any related acts or
27 events immediately preceding or subsequent to the acts or events
28 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 ~~law enforcement officer who~~
31 ~~was acting in accordance with his or her official duties~~ is
32 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
33 of the State Constitution, except that a surviving spouse of the
34 decedent may view and copy any such photograph or video
35 recording or listen to or copy any such audio recording. If
36 there is no surviving spouse, then the surviving parents shall
37 have access to such records. If there is no surviving spouse or
38 parent, then the ~~an~~ adult children ~~child~~ shall have access to
39 such records.

40 (3) (a) The deceased's surviving relative, with whom
41 authority rests to obtain such records, may designate in writing
42 an agent to obtain 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 ~~law enforcement officer who was acting in~~
48 ~~accordance with his or her official duties~~ and, unless otherwise
49 required in the performance of its ~~their~~ duties, the identity of
50 the deceased shall remain confidential and exempt.

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

55 (4) (a) The court, upon a showing of good cause, may issue
56 an order authorizing any person to view or copy a photograph or
57 video recording that depicts or records the killing of a person
58 ~~law enforcement officer who was acting in accordance with his or~~
59 ~~her official duties~~ or to listen to or copy an audio recording
60 that depicts or records the killing of a person ~~law enforcement~~
61 ~~officer who was acting in accordance with his or her official~~
62 ~~duties~~ and may prescribe any restrictions or stipulations that
63 the court deems appropriate.

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

65 1. Whether such disclosure is necessary for the public
66 evaluation of governmental performance;

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

70 3. The availability of similar information in other public
71 records, regardless of form.

72 (c) In all cases, the viewing, copying, listening to, or
73 other handling of a photograph or video or audio recording that
74 depicts or records the killing of a person ~~law enforcement~~
75 ~~officer who was acting in accordance with his or her official~~

76 | ~~duties~~ must be under the direct supervision of the custodian of
77 | the record or his or her designee.

78 | (5) A surviving spouse shall be given reasonable notice of
79 | a petition filed with the court to view or copy a photograph or
80 | video recording that depicts or records the killing of a person
81 | ~~law enforcement officer who was acting in accordance with his or~~
82 | ~~her official duties~~ or to listen to or copy any such audio
83 | recording, a copy of such petition, and reasonable notice of the
84 | opportunity to be present and heard at any hearing on the
85 | matter. If there is no surviving spouse, then such notice must
86 | be given to the parents of the deceased and, if the deceased has
87 | no surviving ~~living~~ parent, then to the adult children of the
88 | deceased.

89 | (6) (a) Any custodian of a photograph or video or audio
90 | recording that depicts or records the killing of a person ~~law~~
91 | ~~enforcement officer who was acting in accordance with his or her~~
92 | ~~official duties~~ who willfully and knowingly violates this
93 | section commits a felony of the third degree, punishable as
94 | provided in s. 775.082, s. 775.083, or s. 775.084.

95 | (b) Any person who willfully and knowingly violates a
96 | court order issued pursuant to this section commits a felony of
97 | the third degree, punishable as provided in s. 775.082, s.
98 | 775.083, or s. 775.084.

99 | (c) A criminal or administrative proceeding is exempt from
100 | this section but, unless otherwise exempted, is subject to all

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101 other provisions of chapter 119; it provided, however, ~~that~~ this
102 section does not prohibit a court in a criminal or
103 administrative proceeding upon good cause shown from restricting
104 or otherwise controlling the disclosure of a killing, crime
105 scene, or similar photograph or video or audio recording
106 ~~recordings~~ in the manner prescribed in this section ~~herein~~.

107 (7) The ~~This~~ exemption in this section shall be given
108 retroactive application and shall apply to all photographs or
109 video or audio recordings that depict or record the killing of a
110 person ~~law enforcement officer who was acting in accordance with~~
111 ~~his or her official duties~~, regardless of whether the killing of
112 the person occurred before, on, or after October 1, 2016 ~~July 1,~~
113 ~~2014~~. However, nothing in this section ~~herein~~ is intended to,
114 nor may be construed to, overturn or abrogate or alter any
115 existing orders duly entered into by any court of this state, as
116 of the effective date of this act, which restrict or limit
117 access to any photographs or video or audio recordings that
118 depict or record the killing of a person ~~law enforcement officer~~
119 ~~who was acting in accordance with his or her official duties~~.

120 (8) This section only applies to such photographs and
121 video and audio recordings held by an agency as defined in s.
122 119.011.

123 (9) This section is subject to the Open Government Sunset
124 Review Act in accordance with s. 119.15 and shall stand repealed
125 on October 2, 2022, unless reviewed and saved from repeal

126 through reenactment by the Legislature.

127 Section 2. (1) The Legislature finds that it is a public
128 necessity that photographs and video and audio recordings that
129 depict or record the killing of any person be made confidential
130 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
131 Art. I of the State Constitution. The Legislature finds that
132 photographs and video and audio recordings that depict or record
133 the killing of any person render a visual or aural
134 representation of the deceased in graphic and often disturbing
135 fashion. Such photographs and video and audio recordings provide
136 a view of the deceased in the final moments of life, often
137 bruised, bloodied, broken, with bullet wounds or other wounds,
138 cut open, dismembered, or decapitated. As such, photographs and
139 video and audio recordings that depict or record the killing of
140 any person are highly sensitive representations of the deceased
141 which, if heard, viewed, copied, or publicized, could result in
142 trauma, sorrow, humiliation, or emotional injury to the
143 immediate family of the deceased and detract from how the
144 deceased will be remembered. The Legislature recognizes that the
145 existence of the Internet and the proliferation of personal
146 computers and cellular telephones throughout the world
147 encourages and promotes the wide dissemination of such
148 photographs and video and audio recordings 24 hours a day and
149 that widespread unauthorized dissemination of such photographs
150 and video and audio recordings would subject the immediate

151 family of the deceased to continuous injury.

152 (2) In addition to the emotional and mental injury that
153 these photographs and recordings may cause family members, the
154 Legislature is also concerned that dissemination of photographs
155 and video and audio recordings that depict or record the killing
156 of a person is harmful to the public. The Legislature is gravely
157 concerned and saddened by the horrific mass killings perpetrated
158 at the Pulse nightclub in Orlando and at the Fort Lauderdale-
159 Hollywood International Airport. The Legislature is concerned
160 that, if these photographs and recordings are released,
161 terrorists will use them to inspire others to perpetrate
162 killings, attract followers, and bring attention to their
163 causes. The Legislature also finds that dissemination of
164 photographs and video and audio recordings of mass killings may
165 also educe violent acts by the mentally ill or the morally
166 corrupt.

167 (3) The Legislature further recognizes that there
168 continues to be other types of available information, such as
169 crime scene reports, which are less intrusive and injurious to
170 the immediate family members of the deceased and which continue
171 to provide for public oversight. The Legislature further finds
172 that the exemption provided in this act should be given
173 retroactive application because it is remedial in nature.

174 Section 3. This act shall take effect October 1, 2017.