

By Senator Bracy

11-01201-18

20181178__

1 A bill to be entitled
2 An act relating to public records; amending s.
3 406.136, F.S.; defining the terms "killing of a
4 person" and "care and custody of a state agency";
5 expanding an exemption from public records
6 requirements for a photograph or video or audio
7 recording held by an agency which depicts or records
8 the killing of a law enforcement officer to include a
9 photograph or video or audio recording held by an
10 agency which depicts or records the killing of a
11 person; specifying that the exemption from public
12 records requirements does not apply to the killing of
13 a person in the care and custody of a state agency;
14 providing for future legislative review and repeal of
15 the exemption; providing a statement of public
16 necessity; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 406.136, Florida Statutes, is amended to
21 read:

22 406.136 A photograph or video or audio recording that
23 depicts or records the killing of a person ~~law enforcement~~
24 ~~officer who was acting in accordance with his or her official~~
25 ~~duties.~~

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

11-01201-18

20181178__

30 ~~being a law enforcement officer who was acting in accordance~~
31 ~~with his or her official duties, including any related acts or~~
32 ~~events immediately preceding or subsequent to the acts or events~~
33 ~~that were the proximate cause of death. The term does not~~
34 ~~include the killing of a person in the care and custody of a~~
35 ~~state agency. For purposes of this subsection, the term "care~~
36 ~~and custody of a state agency" includes, but is not limited to,~~
37 ~~a protective investigation, protective supervision, or foster~~
38 ~~care as those terms are defined in s. 39.01; a protective~~
39 ~~investigation or protective supervision of a vulnerable adult as~~
40 ~~those terms are defined in s. 415.102; or an inmate in custody~~
41 ~~of the Department of Corrections.~~

42 (2) A photograph or video or audio recording that depicts
43 or records the killing of a person ~~law enforcement officer who~~
44 ~~was acting in accordance with his or her official duties~~ is
45 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
46 of the State Constitution, except that a surviving spouse of the
47 deceased decedent may view and copy any such photograph or video
48 recording or listen to or copy any such audio recording. If
49 there is no surviving spouse, ~~then~~ the surviving parents shall
50 have access to such records. If there is no surviving spouse or
51 parent, ~~the then an~~ adult children ~~child~~ shall have access to
52 such records.

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

56 (b) A local governmental entity, or a state or federal
57 agency, in furtherance of its official duties, pursuant to a
58 written request, may view or copy a photograph or video

11-01201-18

20181178__

59 recording or may listen to or copy an audio recording of the
60 killing of a person ~~law enforcement officer who was acting in~~
61 ~~accordance with his or her official duties~~ and, unless otherwise
62 required in the performance of its ~~their~~ duties, the identity of
63 the deceased shall remain confidential and exempt.

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

68 (4) (a) The court, upon a showing of good cause, may issue
69 an order authorizing any person to view or copy a photograph or
70 video recording that depicts or records the killing of a person
71 ~~law enforcement officer who was acting in accordance with his or~~
72 ~~her official duties~~ or to listen to or copy an audio recording
73 that depicts or records the killing of a person ~~law enforcement~~
74 ~~officer who was acting in accordance with his or her official~~
75 ~~duties~~ and may prescribe any restrictions or stipulations that
76 the court deems appropriate.

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

78 1. Whether such disclosure is necessary for the public
79 evaluation of governmental performance;

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

83 3. The availability of similar information in other public
84 records, regardless of form.

85 (c) In all cases, the viewing, copying, listening to, or
86 other handling of a photograph or video or audio recording that
87 depicts or records the killing of a person ~~law enforcement~~

11-01201-18

20181178__

88 ~~officer who was acting in accordance with his or her official~~
89 ~~duties~~ must be under the direct supervision of the custodian of
90 the record or his or her designee.

91 (5) A surviving spouse shall be given reasonable notice of
92 a petition filed with the court to view or copy a photograph or
93 video recording that depicts or records the killing of a person
94 ~~law enforcement officer who was acting in accordance with his or~~
95 ~~her official duties~~ or to listen to or copy any such audio
96 recording, a copy of such petition, and reasonable notice of the
97 opportunity to be present and heard at any hearing on the
98 matter. If there is no surviving spouse, ~~then~~ such notice must
99 be given to the parents of the deceased and, if the deceased has
100 no surviving living parent, ~~then~~ to the adult children of the
101 deceased.

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

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

112 (c) A criminal or administrative proceeding is exempt from
113 this section but, unless otherwise exempted, is subject to all
114 other provisions of chapter 119; 7 provided, however, ~~that~~ this
115 section does not prohibit a court in a criminal or
116 administrative proceeding upon good cause shown from restricting

11-01201-18

20181178__

117 or otherwise controlling the disclosure of a killing, crime
118 scene, or similar photograph or video or audio recording
119 ~~recordings~~ in the manner prescribed in this section ~~herein~~.

120 (7) The ~~This~~ exemption in this section shall be given
121 retroactive application and shall apply to all photographs or
122 video or audio recordings that depict or record the killing of a
123 person law enforcement officer who was acting in accordance with
124 ~~his or her official duties~~, regardless of whether the killing of
125 the person occurred before, on, or after July 1, 2015 ~~2011~~.

126 However, ~~nothing~~ this section herein is not intended to, and ~~nor~~
127 may not be construed to, overturn or abrogate or alter any
128 existing orders duly entered into by any court of this state, as
129 of the effective date of this act, which restrict or limit
130 access to any photographs or video or audio recordings that
131 depict or record the killing of a person law enforcement officer
132 ~~who was acting in accordance with his or her official duties~~.

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

135 (9) This section is subject to the Open Government Sunset
136 Review Act in accordance with s. 119.15 and shall stand repealed
137 on October 2, 2023, unless reviewed and saved from repeal
138 through reenactment by the Legislature.

139 Section 2. (1) The Legislature finds that it is a public
140 necessity that photographs and video and audio recordings that
141 depict or record the killing of a person be made confidential
142 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
143 Art. I of the State Constitution. The Legislature finds that
144 photographs and video and audio recordings that depict or record
145 the killing of a person render a graphic and often disturbing

11-01201-18

20181178__

146 visual or aural representation of the deceased. Such photographs
147 and video and audio recordings provide a view of the deceased in
148 the final moments of life, often bruised, bloodied, broken, with
149 bullet wounds or other wounds, cut open, dismembered, or
150 decapitated. As such, photographs and video and audio recordings
151 that depict or record the killing of a person are highly
152 sensitive representations of the deceased which, if heard,
153 viewed, copied, or publicized, could result in trauma, sorrow,
154 humiliation, or emotional injury to the immediate family of the
155 deceased and detract from the memory of the deceased. The
156 Legislature recognizes that the existence of the Internet and
157 the proliferation of personal computers and cellular telephones
158 throughout the world encourage and promote the wide
159 dissemination of such photographs and video and audio recordings
160 and that widespread unauthorized dissemination of such
161 photographs and video and audio recordings would subject the
162 immediate family of the deceased to continuous injury.

163 (2) In addition to the emotional and mental injury that
164 these photographs and recordings may cause family members, the
165 Legislature is also concerned that dissemination of photographs
166 and video and audio recordings that depict or record the killing
167 of a person is harmful to the public. The Legislature is gravely
168 concerned and saddened by the horrific mass killings perpetrated
169 at the Pulse nightclub in Orlando and the Fort Lauderdale-
170 Hollywood International Airport. The Legislature is concerned
171 that, if these photographs and recordings are released,
172 terrorists will use them to attract followers, bring attention
173 to their causes, and inspire others to kill. The Legislature
174 also finds that dissemination of these photographs and

11-01201-18

20181178__

175 recordings may also educe violent acts by the mentally ill or
176 morally corrupt.

177 (3) The Legislature further recognizes that there continues
178 to be other types of available information, such as crime scene
179 reports, which are less intrusive and injurious to the immediate
180 family of the deceased and which continue to provide for public
181 oversight. The Legislature further finds that the exemption
182 provided in this act should be given retroactive application
183 because it is remedial in nature.

184 Section 3. This act shall take effect October 1, 2018.