

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. The term does not
29 | include the killing of a person in the care and custody of a
30 | state agency. For purposes of this subsection, the term "care
31 | and custody of a state agency" includes, but is not limited to,
32 | a child abuse protective investigation, protective supervision,
33 | foster care and related services, a protective investigation or
34 | protective supervision of a vulnerable adult, or correctional
35 | supervision, as defined in chapter 39, chapter 409, chapter 415,
36 | or chapter 945.

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

48 | (3) (a) The deceased's surviving relative, with whom
49 | authority rests to obtain such records, may designate in writing
50 | an agent to obtain such records.

51 (b) A local governmental entity, or a state or federal
52 agency, in furtherance of its official duties, pursuant to a
53 written request, may view or copy a photograph or video
54 recording or may listen to or copy an audio recording of the
55 killing of a person ~~law enforcement officer who was acting in~~
56 ~~accordance with his or her official duties~~ and, unless otherwise
57 required in the performance of its ~~their~~ duties, the identity of
58 the deceased shall remain confidential and exempt.

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

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

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

- 73 1. Whether such disclosure is necessary for the public
74 evaluation of governmental performance;
75 2. The seriousness of the intrusion into the family's

76 right to privacy and whether such disclosure is the least
77 intrusive means available; and

78 3. The availability of similar information in other public
79 records, regardless of form.

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

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

97 (6) (a) Any custodian of a photograph or video or audio
98 recording that depicts or records the killing of a person ~~law~~
99 ~~enforcement officer who was acting in accordance with his or her~~
100 ~~official duties~~ who willfully and knowingly violates this

101 section commits a felony of the third degree, punishable as
 102 provided in s. 775.082, s. 775.083, or s. 775.084.

103 (b) Any person who willfully and knowingly violates a
 104 court order issued pursuant to this section commits a felony of
 105 the third degree, punishable as provided in s. 775.082, s.
 106 775.083, or s. 775.084.

107 (c) A criminal or administrative proceeding is exempt from
 108 this section but, unless otherwise exempted, is subject to all
 109 other provisions of chapter 119; provided, however, ~~that~~ this
 110 section does not prohibit a court in a criminal or
 111 administrative proceeding upon good cause shown from restricting
 112 or otherwise controlling the disclosure of a killing, crime
 113 scene, or similar photograph or video or audio recording
 114 ~~recordings~~ in the manner prescribed in this section ~~herein~~.

115 (7) The ~~This~~ exemption in this section shall be given
 116 retroactive application and shall apply to all photographs or
 117 video or audio recordings that depict or record the killing of a
 118 person ~~law enforcement officer who was acting in accordance with~~
 119 ~~his or her official duties~~, regardless of whether the killing of
 120 the person occurred before, on, or after July 1, 2015 ~~2011~~.
 121 However, nothing in this section ~~herein~~ is intended to, nor may
 122 be construed to, overturn or abrogate or alter any existing
 123 orders duly entered into by any court of this state, as of the
 124 effective date of this act, which restrict or limit access to
 125 any photographs or video or audio recordings that depict or

126 | record the killing of a person ~~law enforcement officer who was~~
127 | ~~acting in accordance with his or her official duties.~~

128 | (8) This section only applies to such photographs and
129 | video and audio recordings held by an agency as defined in s.
130 | 119.011.

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

135 | Section 2. (1) The Legislature finds that it is a public
136 | necessity that photographs and video and audio recordings that
137 | depict or record the killing of a person be made confidential
138 | and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
139 | Art. I of the State Constitution. The Legislature finds that
140 | photographs and video and audio recordings that depict or record
141 | the killing of a person render a graphic and often disturbing
142 | visual or aural representation of the deceased. Such photographs
143 | and video and audio recordings provide a view of the deceased in
144 | the final moments of life, often bruised, bloodied, broken, with
145 | bullet wounds or other wounds, cut open, dismembered, or
146 | decapitated. As such, photographs and video and audio recordings
147 | that depict or record the killing of a person are highly
148 | sensitive representations of the deceased which, if heard,
149 | viewed, copied, or publicized, could result in trauma, sorrow,
150 | humiliation, or emotional injury to the immediate family of the

151 deceased and detract from the memory of the deceased. The
152 Legislature recognizes that the existence of the Internet and
153 the proliferation of personal computers and cellular telephones
154 throughout the world encourages and promotes the wide
155 dissemination of such photographs and video and audio recordings
156 24 hours a day and that widespread unauthorized dissemination of
157 such photographs and video and audio recordings would subject
158 the immediate family of the deceased to continuous injury.

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

173 (3) The Legislature further recognizes that there
174 continues to be other types of available information, such as
175 crime scene reports, which are less intrusive and injurious to

HB 653

2018

176 | the immediate family of the deceased and which continue to
177 | provide for public oversight. The Legislature further finds that
178 | the exemption provided in this act should be given retroactive
179 | application because it is remedial in nature.

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