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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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03/03/2018 06:13 PM

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Senator Bracy moved the following:

Senate Amendment (with title amendment)

Delete lines 61 - 79

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, or the killing of a victim of an incident of mass violence.-

(1) As used in this section, the term:



156970

12 (a) "Killing of a law enforcement officer who was acting in
13 accordance with his or her official duties" means all acts or
14 events that cause or otherwise relate to the death of a law
15 enforcement officer who was acting in accordance with his or her
16 official duties, 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 (b) "Killing of a victim of an incident of mass violence"
20 means an incident in which four or more people, not including
21 the perpetrator, are severely injured or killed by an
22 intentional and indiscriminate act of violence of another.

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

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

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



156970

41 recording or may listen to or copy an audio recording of the
42 killing of a law enforcement officer who was acting in
43 accordance with his or her official duties, or the killing of a
44 victim of an incident of mass violence, and, unless otherwise
45 required in the performance of its ~~their~~ duties, the identity of
46 the deceased shall remain confidential and exempt.

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

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

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

63 1. Whether such disclosure is necessary for the public
64 evaluation of governmental performance;

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

68 3. The availability of similar information in other public
69 records, regardless of form.



156970

70 (c) In all cases, the viewing, copying, listening to, or
71 other handling of a photograph or video or audio recording that
72 depicts or records the killing of a law enforcement officer who
73 was acting in accordance with his or her official duties, or the
74 killing of a victim of an incident of mass violence, must be
75 under the direct supervision of the custodian of the record or
76 his or her designee.

77 (5) A surviving spouse shall be given reasonable notice of
78 a petition filed with the court to view or copy a photograph or
79 video recording that depicts or records the killing of a law
80 enforcement officer who was acting in accordance with his or her
81 official duties, or the killing of a victim of an incident of
82 mass violence, or to listen to or copy any such audio recording,
83 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 law
91 enforcement officer who was acting in accordance with his or her
92 official duties, or the killing of a victim of an incident of
93 mass violence, who willfully and knowingly violates this section
94 commits a felony of the third degree, punishable as provided in
95 s. 775.082, s. 775.083, or s. 775.084.

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



156970

99 or s. 775.084.

100 (c) A criminal or administrative proceeding is exempt from
101 this section but, unless otherwise exempted, is subject to all
102 other provisions of chapter 119;7 provided, however, ~~that~~ this
103 section does not prohibit a court in a criminal or
104 administrative proceeding upon good cause shown from restricting
105 or otherwise controlling the disclosure of a killing, crime
106 scene, or similar photograph or video or audio recording
107 ~~recordings~~ in the manner prescribed in this section ~~herein~~.

108 (7) The ~~This~~ exemption in this section shall be given
109 retroactive application and shall apply to all photographs or
110 video or audio recordings that depict or record the killing of a
111 law enforcement officer who was acting in accordance with his or
112 her official duties, or the killing of a victim of an incident
113 of mass violence, regardless of whether the killing of the
114 person occurred before, on, or after July 1, 2015 ~~2014~~. However,
115 nothing in this section ~~herein~~ is intended to, nor may be
116 construed to, overturn or abrogate or alter any existing orders
117 duly entered into by any court of this state, as of the
118 effective date of this act, which restrict or limit access to
119 any photographs or video or audio recordings that depict or
120 record the killing of a law enforcement officer who was acting
121 in accordance with his or her official duties, or the killing of
122 a victim of an incident of mass violence.

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

125 (9) This section is subject to the Open Government Sunset
126 Review Act in accordance with s. 119.15 and shall stand repealed
127 on October 2, 2023, unless reviewed and saved from repeal



156970

128 through reenactment by the Legislature.

129 Section 2. (1) The Legislature finds that it is a public
130 necessity that the address of victims of an incident of mass
131 violence be made exempt from s. 119.07(1), Florida Statutes, and
132 s. 24(a), Article I of the State Constitution. After an incident
133 of mass violence has occurred, victims of such an incident are
134 in a vulnerable state as they assist law enforcement with the
135 investigation of the incident and try to recover from the events
136 that occurred. In some instances, the victim may have been
137 killed or injured leaving their families to deal with the
138 aftermath of the crime. The public availability of such victim's
139 address may be used to locate the victim or the victim's family.
140 The availability of such information has allowed people to take
141 advantage of the victims or their families by subjecting the
142 victims or their families to media intrusions at their homes and
143 other unwelcome intrusions into their privacy. Therefore, it is
144 necessary that the address of victims of incidents of mass
145 violence be protected to ensure that persons affected by such
146 incidents are not harassed, taken advantage of, or otherwise
147 subjected to additional pain and suffering.

148 (2) The Legislature also finds that it is a public
149 necessity that photographs and video and audio recordings that
150 depict or record the killing of a victim of an incident of mass
151 violence, be made confidential and exempt from s. 119.07(1),
152 Florida Statutes, and s. 24(a), Article I of the State
153 Constitution. The Legislature finds that photographs and video
154 and audio recordings that depict or record the killing of a
155 victim of an incident of mass violence render a graphic and
156 often disturbing visual or aural representation of the deceased.



156970

157 Such photographs and video and audio recordings provide a view
158 of the deceased in the final moments of life, often bruised,
159 bloodied, broken, with bullet wounds or other wounds, cut open,
160 dismembered, or decapitated. As such, photographs and video and
161 audio recordings that depict or record the killing of a victim
162 of an incident of mass violence are highly sensitive
163 representations of the deceased which, if heard, viewed, copied,
164 or publicized, could result in trauma, sorrow, humiliation, or
165 emotional injury to the immediate family of the deceased and
166 detract from the memory of the deceased. The Legislature
167 recognizes that the existence of the Internet and the
168 proliferation of personal computers and cellular telephones
169 throughout the world encourages and promotes the wide
170 dissemination of such photographs and video and audio recordings
171 24 hours a day and that widespread unauthorized dissemination of
172 such photographs and video and audio recordings would subject
173 the immediate family of the deceased to continuous injury.

174 (3) In addition to the emotional and mental injury that
175 these photographs and recordings may cause family members, the
176 Legislature is also concerned that dissemination of photographs
177 and video and audio recordings that depict or record the killing
178 of a victim of an incident of mass violence is harmful to the
179 public. The Legislature is gravely concerned and saddened by the
180 horrific mass killings perpetrated at the Pulse nightclub in
181 Orlando, the Fort Lauderdale-Hollywood International Airport,
182 and Marjory Stoneman Douglas High School. The Legislature is
183 concerned that, if these photographs and recordings are
184 released, terrorists will use them to attract followers, bring
185 attention to their causes, and inspire others to kill. The



156970

186 Legislature also finds that dissemination of these photographs
187 and recordings may also educe violent acts by the mentally ill
188 or morally corrupt.

189 (4) The Legislature further recognizes that there continues
190 to be other types of available information, such as crime scene
191 reports, which are less intrusive and injurious to the immediate
192 family of the deceased and which continue to provide for public
193 oversight. The Legislature further finds that the exemption
194 provided in s. 406.136, Florida Statutes, as amended by this
195 act, should be given retroactive application because it is
196 remedial in nature.

197
198 ===== T I T L E A M E N D M E N T =====

199 And the title is amended as follows:

200 Delete lines 10 - 11

201 and insert:

202 criminal investigative information; amending s.
203 406.136, F.S.; expanding an exemption from public
204 records requirements for a photograph or video or
205 audio recording held by an agency that depicts or
206 records the killing of a law enforcement officer to
207 include a photograph or video or audio recording held
208 by an agency that depicts or records the killing of a
209 victim of an incident of mass violence; defining the
210 term "killing of a victim of an incident of mass
211 violence"; providing for retroactive application;
212 providing for future legislative review and repeal of
213 the exemption; providing statements of public
214 necessity; providing an effective