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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 09:59 AM

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Senator Bracy moved the following:

**Senate Amendment (with title amendment)**

Delete lines 61 - 79

and insert:

Section 3. 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 person ~~law enforcement officer who was acting in accordance with his or her official duties.~~

(1) As used in this section, the term "killing of a person"



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12 ~~"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 any human  
15 ~~being a law enforcement officer who was acting in accordance~~  
16 ~~with his or her official duties~~, including any related acts or  
17 events immediately preceding or subsequent to the acts or events  
18 that were the proximate cause of death. The term does not  
19 include the killing of a person in the care and custody of a  
20 state agency. For purposes of this subsection, the term "care  
21 and custody of a state agency" includes, but is not limited to,  
22 a child abuse protective investigation, protective supervision,  
23 foster care and related services, a protective investigation or  
24 protective supervision of a vulnerable adult, or correctional  
25 supervision, as defined in chapter 39, chapter 409, chapter 415,  
26 or chapter 945.

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

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



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41 (b) A local governmental entity, or a state or federal  
42 agency, in furtherance of its official duties, pursuant to a  
43 written request, may view or copy a photograph or video  
44 recording or may listen to or copy an audio recording of the  
45 killing of a person ~~law enforcement officer who was acting in~~  
46 ~~accordance with his or her official duties~~ and, unless otherwise  
47 required in the performance of its ~~their~~ duties, the identity of  
48 the deceased shall remain confidential and exempt.

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

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



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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 person ~~law enforcement~~  
73 ~~officer who was acting in accordance with his or her official~~  
74 ~~duties~~ must be under the direct supervision of the custodian of  
75 the record or his or her designee.

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

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

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

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



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99 other provisions of chapter 119; ~~7~~ provided, however, ~~that~~ this  
100 section does not prohibit a court in a criminal or  
101 administrative proceeding upon good cause shown from restricting  
102 or otherwise controlling the disclosure of a killing, crime  
103 scene, or similar photograph or video or audio recording  
104 ~~recordings~~ in the manner prescribed in this section herein.

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

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

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

124 Section 4. (1) The Legislature finds that it is a public  
125 necessity that the address of victims of an incident of mass  
126 violence be made exempt from s. 119.07(1), Florida Statutes, and  
127 s. 24(a), Article I of the State Constitution. After an incident



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

143 (2) The Legislature also finds that it is a public  
144 necessity that photographs and video and audio recordings that  
145 depict or record the killing of a person be made confidential  
146 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
147 Article I of the State Constitution. The Legislature finds that  
148 photographs and video and audio recordings that depict or record  
149 the killing of a person render a graphic and often disturbing  
150 visual or aural representation of the deceased. Such photographs  
151 and video and audio recordings provide a view of the deceased in  
152 the final moments of life, often bruised, bloodied, broken, with  
153 bullet wounds or other wounds, cut open, dismembered, or  
154 decapitated. As such, photographs and video and audio recordings  
155 that depict or record the killing of a person are highly  
156 sensitive representations of the deceased which, if heard,



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157 viewed, copied, or publicized, could result in trauma, sorrow,  
158 humiliation, or emotional injury to the immediate family of the  
159 deceased and detract from the memory of the deceased. The  
160 Legislature recognizes that the existence of the Internet and  
161 the proliferation of personal computers and cellular telephones  
162 throughout the world encourages and promotes the wide  
163 dissemination of such photographs and video and audio recordings  
164 24 hours a day and that widespread unauthorized dissemination of  
165 such photographs and video and audio recordings would subject  
166 the immediate family of the deceased to continuous injury.

167 (3) In addition to the emotional and mental injury that  
168 these photographs and recordings may cause family members, the  
169 Legislature is also concerned that dissemination of photographs  
170 and video and audio recordings that depict or record the killing  
171 of a person is harmful to the public. The Legislature is gravely  
172 concerned and saddened by the horrific mass killings perpetrated  
173 at the Pulse nightclub in Orlando, the Fort Lauderdale-Hollywood  
174 International Airport, and at Marjory Stoneman Douglas High  
175 School. The Legislature is concerned that, if these photographs  
176 and recordings are released, terrorists will use them to attract  
177 followers, bring attention to their causes, and inspire others  
178 to kill. The Legislature also finds that dissemination of these  
179 photographs and recordings may also educe violent acts by the  
180 mentally ill or morally corrupt.

181 (4) The Legislature further recognizes that there continues  
182 to be other types of available information, such as crime scene  
183 reports, which are less intrusive and injurious to the immediate  
184 family of the deceased and which continue to provide for public  
185 oversight. The Legislature further finds that the exemption



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186 provided in s. 406.136, Florida Statutes, as amended by this  
187 act, should be given retroactive application because it is  
188 remedial in nature.

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190 ===== T I T L E A M E N D M E N T =====

191 And the title is amended as follows:

192 Delete lines 10 - 11

193 and insert:

194 criminal investigative information; amending s.  
195 406.136, F.S.; expanding an exemption from public  
196 records requirements for a photograph or video or  
197 audio recording held by an agency that depicts or  
198 records the killing of a law enforcement officer to  
199 include a photograph or video or audio recording held  
200 by an agency that depicts or records the killing of a  
201 person; providing for future legislative review and  
202 repeal of the exemption; providing statements of  
203 public necessity; providing an effective