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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:

1 **Senate Substitute for Amendment (366264) (with title**
2 **amendment)**

3
4 Delete lines 61 - 79

5 and insert:

6 Section 3. Section 406.136, Florida Statutes, is amended to
7 read:

8 406.136 A photograph or video or audio recording that
9 depicts or records the killing of a law enforcement officer who
10 was acting in accordance with his or her official duties, the
11 killing of a victim of a school shooting, or the killing of a



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12 victim of a mass shooting.—

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

14 (a) "Killing of a law enforcement officer who was acting in
15 accordance with his or her official duties" means all acts or
16 events that cause or otherwise relate to the death of a law
17 enforcement officer who was acting in accordance with his or her
18 official duties, including any related acts or events
19 immediately preceding or subsequent to the acts or events that
20 were the proximate cause of death.

21 (b) "Killing of a victim of a mass shooting" means all acts
22 or events that cause or otherwise relate to the death of a
23 person, not including the perpetrator, who is killed in an
24 incident in which three or more people, not including the
25 perpetrator, are killed by an intentional act of gun violence by
26 another person.

27 (c) "Killing of a victim of a school shooting" means all
28 acts or events that cause or otherwise relate to the death of a
29 person, not including the perpetrator, who is killed in an
30 incident at a school by an intentional act of gun violence by
31 another person, including any related acts or events immediately
32 preceding or subsequent to the acts or events that were the
33 proximate cause of death.

34 (2) A photograph or video or audio recording that depicts
35 or records the killing of a law enforcement officer who was
36 acting in accordance with his or her official duties, the
37 killing of a victim of a school shooting, or the killing of a
38 victim of a mass shooting is confidential and exempt from s.
39 119.07(1) and s. 24(a), Art. I of the State Constitution, except
40 that a surviving spouse of the decedent may view and copy any



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41 such photograph or video recording or listen to or copy any such
42 audio recording. If there is no surviving spouse, ~~then~~ the
43 surviving parents shall have access to such records. If there is
44 no surviving spouse or parent, the ~~then an~~ adult children ~~child~~
45 shall have access to such records.

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

49 (b) A local governmental entity, or a state or federal
50 agency, in furtherance of its official duties, pursuant to a
51 written request, may view or copy a photograph or video
52 recording or may listen to or copy an audio recording of the
53 killing of a law enforcement officer who was acting in
54 accordance with his or her official duties, the killing of a
55 victim of a school shooting, or the killing of a victim of a
56 mass shooting, and, unless otherwise required in the performance
57 of its ~~their~~ duties, the identity of the deceased shall remain
58 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 law
66 enforcement officer who was acting in accordance with his or her
67 official duties, the killing of a victim of a school shooting,
68 or the killing of a victim of a mass shooting, or to listen to
69 or copy an audio recording that depicts or records the killing



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70 of a law enforcement officer who was acting in accordance with
71 his or her official duties, the killing of a victim of a school
72 shooting, or the killing of a victim of a mass shooting, and may
73 prescribe any restrictions or stipulations that the court deems
74 appropriate.

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

76 1. Whether such disclosure is necessary for the public
77 evaluation of governmental performance;

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

81 3. The availability of similar information in other public
82 records, regardless of form.

83 (c) In all cases, the viewing, copying, listening to, or
84 other handling of a photograph or video or audio recording that
85 depicts or records the killing of a law enforcement officer who
86 was acting in accordance with his or her official duties, the
87 killing of a victim of a school shooting, or the killing of a
88 victim of a mass shooting must be under the direct supervision
89 of the custodian of the record or his or her designee.

90 (5) A surviving spouse shall be given reasonable notice of
91 a petition filed with the court to view or copy a photograph or
92 video recording that depicts or records the killing of a law
93 enforcement officer who was acting in accordance with his or her
94 official duties, the killing of a victim of a school shooting,
95 or the killing of a victim of a mass shooting, or to listen to
96 or copy any such audio recording, a copy of such petition, and
97 reasonable notice of the opportunity to be present and heard at
98 any hearing on the matter. If there is no surviving spouse, ~~then~~



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99 such notice must be given to the parents of the deceased and, if
100 the deceased has no surviving ~~living~~ parent, ~~then~~ to the adult
101 children of the deceased.

102 (6) (a) Any custodian of a photograph or video or audio
103 recording that depicts or records the killing of a law
104 enforcement officer who was acting in accordance with his or her
105 official duties, the killing of a victim of a school shooting,
106 or the killing of a victim of a mass shooting who willfully and
107 knowingly violates this section commits a felony of the third
108 degree, punishable as provided in s. 775.082, s. 775.083, or s.
109 775.084.

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

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

122 (7) The ~~This~~ exemption in this section shall be given
123 retroactive application and shall apply to all photographs or
124 video or audio recordings that depict or record the killing of a
125 law enforcement officer who was acting in accordance with his or
126 her official duties, the killing of a victim of a school
127 shooting, or the killing of a victim of a mass shooting,



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128 regardless of whether the killing of the person occurred before,
129 on, or after July 1, 2015 ~~2011~~. However, nothing in this section
130 herein is intended to, nor may be construed to, overturn or
131 abrogate or alter any existing orders duly entered into by any
132 court of this state, as of the effective date of this act, which
133 restrict or limit access to any photographs or video or audio
134 recordings that depict or record the killing of a law
135 enforcement officer who was acting in accordance with his or her
136 official duties, the killing of a victim of a school shooting,
137 or the killing of a victim of a mass shooting.

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

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

144 Section 4. (1) The Legislature finds that it is a public
145 necessity that the address of victims of an incident of mass
146 violence be made exempt from s. 119.07(1), Florida Statutes, and
147 s. 24(a), Article I of the State Constitution. After an incident
148 of mass violence has occurred, victims of such an incident are
149 in a vulnerable state as they assist law enforcement with the
150 investigation of the incident and try to recover from the events
151 that occurred. In some instances, the victim may have been
152 killed or injured leaving their families to deal with the
153 aftermath of the crime. The public availability of such victim's
154 address may be used to locate the victim or the victim's family.
155 The availability of such information has allowed people to take
156 advantage of the victims or their families by subjecting the



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157 victims or their families to media intrusions at their homes and
158 other unwelcome intrusions into their privacy. Therefore, it is
159 necessary that the address of victims of incidents of mass
160 violence be protected to ensure that persons affected by such
161 incidents are not harassed, taken advantage of, or otherwise
162 subjected to additional pain and suffering.

163 (2) The Legislature also finds that it is a public
164 necessity that photographs and video and audio recordings that
165 depict or record the killing of a victim of a school shooting or
166 the killing of a victim of a mass shooting be made confidential
167 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
168 Article I of the State Constitution. The Legislature finds that
169 photographs and video and audio recordings that depict or record
170 the killing of a victim of a school shooting or the killing of a
171 victim of a mass shooting render a graphic and often disturbing
172 visual or aural representation of the deceased. Such photographs
173 and video and audio recordings provide a view of the deceased in
174 the final moments of life, often bruised, bloodied, broken, with
175 bullet wounds or other wounds, cut open, dismembered, or
176 decapitated. As such, photographs and video and audio recordings
177 that depict or record the killing of a victim of a school
178 shooting or the killing of a victim of a mass shooting are
179 highly sensitive representations of the deceased which, if
180 heard, viewed, copied, or publicized, could result in trauma,
181 sorrow, humiliation, or emotional injury to the immediate family
182 of the deceased and detract from the memory of the deceased. The
183 Legislature recognizes that the existence of the Internet and
184 the proliferation of personal computers and cellular telephones
185 throughout the world encourages and promotes the wide



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186 dissemination of such photographs and video and audio recordings
187 24 hours a day and that widespread unauthorized dissemination of
188 such photographs and video and audio recordings would subject
189 the immediate family of the deceased to continuous injury.

190 (3) In addition to the emotional and mental injury that
191 these photographs and recordings may cause family members, the
192 Legislature is also concerned that dissemination of photographs
193 and video and audio recordings that depict or record the killing
194 of a victim of a school shooting or the killing of a victim of a
195 mass shooting is harmful to the public. The Legislature is
196 gravely concerned and saddened by the horrific mass killings
197 perpetrated at the Pulse nightclub in Orlando, the Fort
198 Lauderdale-Hollywood International Airport, and Marjory Stoneman
199 Douglas High School. The Legislature is concerned that, if these
200 photographs and recordings are released, terrorists will use
201 them to attract followers, bring attention to their causes, and
202 inspire others to kill. The Legislature also finds that
203 dissemination of these photographs and recordings may also educe
204 violent acts by the mentally ill or morally corrupt.

205 (4) The Legislature further recognizes that there continues
206 to be other types of available information, such as crime scene
207 reports, which are less intrusive and injurious to the immediate
208 family of the deceased and which continue to provide for public
209 oversight. The Legislature further finds that the exemption
210 provided in s. 406.136, Florida Statutes, as amended by this act
211 should be given retroactive application because it is remedial
212 in nature.

213
214 ===== T I T L E A M E N D M E N T =====



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215 And the title is amended as follows:
216 Delete lines 10 - 11
217 and insert:
218 criminal investigative information; amending s.
219 406.136, F.S.; expanding an exemption from public
220 records requirements for a photograph or video or
221 audio recording held by an agency that depicts or
222 records the killing of a law enforcement officer to
223 include a photograph or video or audio recording held
224 by an agency that depicts or records the killing of a
225 victim of a school shooting or the killing of a victim
226 of a mass shooting; providing for future legislative
227 review and repeal of the exemption; providing
228 statements of public necessity; providing an effective