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1 A bill to be entitled
2 An act relating to public records; transferring,
3 renumbering, and amending s. 406.136, F.S.; defining
4 the term "killing of a victim of mass violence";
5 expanding an existing exemption from public records
6 requirements for a photograph or a 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 a video or audio recording held by an
10 agency which depicts or records the killing of a
11 victim of mass violence; clarifying that a surviving
12 spouse, parent, or adult child of the victim is not
13 precluded from publicly releasing such photograph or
14 video or audio recording; providing criminal
15 penalties; providing retroactive applicability;
16 providing for future legislative review and repeal of
17 the exemption; conforming provisions to changes made
18 by the act; providing a statement of public necessity;
19 providing a directive to the Division of Law Revision;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 406.136, Florida Statutes, is
25 transferred, renumbered as paragraph (p) of subsection (2) of
26 section 119.071, Florida Statutes, and amended, to read:

27 119.071 General exemptions from inspection or copying of
28 public records.—

29 (2) AGENCY INVESTIGATIONS.—

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30 (p)1.~~(1)~~ As used in this paragraph ~~section~~, the term:

31 a. "Killing of a law enforcement officer who was acting in
32 accordance with his or her official duties" means all acts or
33 events that cause or otherwise relate to the death of a law
34 enforcement officer who was acting in accordance with his or her
35 official duties, including any related acts or events
36 immediately preceding or subsequent to the acts or events that
37 were the proximate cause of death.

38 b. "Killing of a victim of mass violence" means events that
39 depict either a victim being killed or the body of a victim
40 killed in an incident in which three or more persons, not
41 including the perpetrator, are killed by the perpetrator of an
42 intentional act of violence. For purposes of this definition,
43 the term "perpetrator" does not include a public official or a
44 public employee acting within the scope of his or her duties or
45 under color of office at the time of the killing.

46 2.~~(2)~~ A photograph or video or audio recording that depicts
47 or records the killing of a law enforcement officer who was
48 acting in accordance with his or her official duties or the
49 killing of a victim of mass violence is confidential and exempt
50 from s. 119.07(1) and s. 24(a), Art. I of the State
51 Constitution, except that a surviving spouse of the decedent may
52 view and copy any such photograph or video recording or listen
53 to or copy any such audio recording. If there is no surviving
54 spouse, ~~then~~ the surviving parents shall have access to such
55 records. If there is no surviving spouse or parent, the ~~then an~~
56 adult children child shall have access to such records. Nothing
57 in this paragraph precludes a surviving spouse, parent, or adult
58 child of the victim from sharing or publicly releasing such

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59 photograph or video or audio recording.

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

63 b.(b) A local governmental entity, or a state or federal
64 agency, in furtherance of its official duties, pursuant to a
65 written request, may view or copy a photograph or video
66 recording or may listen to or copy an audio recording of the
67 killing of a law enforcement officer who was acting in
68 accordance with his or her official duties or the killing of a
69 victim of mass violence, and, unless otherwise required in the
70 performance of its ~~their~~ duties, the identity of the deceased
71 shall remain confidential and exempt.

72 c.(e) The custodian of the record, or his or her designee,
73 may not permit any other person to view or copy such photograph
74 or video recording or listen to or copy such audio recording
75 without a court order.

76 4.a.(4)(a) The court, upon a showing of good cause, may
77 issue an order authorizing any person to view or copy a
78 photograph or video recording that depicts or records the
79 killing of a law enforcement officer who was acting in
80 accordance with his or her official duties or the killing of a
81 victim of mass violence, or to listen to or copy an audio
82 recording that depicts or records the killing of a law
83 enforcement officer who was acting in accordance with his or her
84 official duties or the killing of a victim of mass violence, and
85 may prescribe any restrictions or stipulations that the court
86 deems appropriate.

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

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88 (I)1. Whether such disclosure is necessary for the public
89 evaluation of governmental performance;

90 (II)2. The seriousness of the intrusion into the family's
91 right to privacy and whether such disclosure is the least
92 intrusive means available; and

93 (III)3. The availability of similar information in other
94 public records, regardless of form.

95 c.(e) In all cases, the viewing, copying, listening to, or
96 other handling of a photograph or video or audio recording that
97 depicts or records the killing of a law enforcement officer who
98 was acting in accordance with his or her official duties or the
99 killing of a victim of mass violence must be under the direct
100 supervision of the custodian of the record or his or her
101 designee.

102 5.(5) A surviving spouse shall be given reasonable notice
103 of a petition filed with the court to view or copy a photograph
104 or video recording that depicts or records the killing of a law
105 enforcement officer who was acting in accordance with his or her
106 official duties or the killing of a victim of mass violence, or
107 to listen to or copy any such audio recording, a copy of such
108 petition, and reasonable notice of the opportunity to be present
109 and heard at any hearing on the matter. If there is no surviving
110 spouse, ~~then~~ such notice must be given to the parents of the
111 deceased and, if the deceased has no surviving ~~living~~ parent,
112 ~~then~~ to the adult children of the deceased.

113 6.a.(6)(a) Any custodian of a photograph or video or audio
114 recording that depicts or records the killing of a law
115 enforcement officer who was acting in accordance with his or her
116 official duties or the killing of a victim of mass violence who

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117 willfully and knowingly violates this paragraph ~~section~~ commits
118 a felony of the third degree, punishable as provided in s.
119 775.082, s. 775.083, or s. 775.084.

120 b.~~(b)~~ Any person who willfully and knowingly violates a
121 court order issued pursuant to this paragraph ~~section~~ commits a
122 felony of the third degree, punishable as provided in s.
123 775.082, s. 775.083, or s. 775.084.

124 c.~~(c)~~ A criminal or administrative proceeding is exempt
125 from this paragraph ~~section~~ but, unless otherwise exempted, is
126 subject to all other provisions of chapter 119; ~~provided~~
127 however, ~~that~~ this paragraph ~~section~~ does not prohibit a court
128 in a criminal or administrative proceeding upon good cause shown
129 from restricting or otherwise controlling the disclosure of a
130 killing, crime scene, or similar photograph or video or audio
131 recording ~~recordings~~ in the manner prescribed in this paragraph
132 ~~herein~~.

133 7.~~(7)~~ ~~The~~ This exemption in this paragraph shall be given
134 retroactive application and shall apply to all photographs or
135 video or audio recordings that depict or record the killing of a
136 law enforcement officer who was acting in accordance with his or
137 her official duties or the killing of a victim of mass violence,
138 regardless of whether the killing of the person occurred before,
139 on, or after the effective date of this act ~~July 1, 2011~~.
140 However, nothing in this paragraph ~~herein~~ is intended to, nor
141 may be construed to, overturn or abrogate or alter any existing
142 orders duly entered into by any court of this state, as of the
143 effective date of this act, which restrict or limit access to
144 any photographs or video or audio recordings that depict or
145 record the killing of a law enforcement officer who was acting

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146 in accordance with his or her official duties or the killing of
147 a victim of mass violence.

148 8.(8) This paragraph section only applies only to such
149 photographs and video and audio recordings held by an agency as
150 defined in s. 119.011.

151 9. This paragraph is subject to the Open Government Sunset
152 Review Act in accordance with s. 119.15 and shall stand repealed
153 on October 2, 2024, unless reviewed and saved from repeal
154 through reenactment by the Legislature.

155 Section 2. (1) The Legislature finds that it is a public
156 necessity that photographs and video and audio recordings that
157 depict or record the killing of a victim of mass violence be
158 made confidential and exempt from s. 119.07(1), Florida
159 Statutes, and s. 24(a), Article I of the State Constitution. The
160 Legislature finds that photographs and video and audio
161 recordings that depict or record the killing of a victim of mass
162 violence render a graphic and often disturbing visual or aural
163 representation of the deceased. Such photographs and video and
164 audio recordings provide a view of the deceased in the final
165 moments of life, in which they are often bruised, bloodied,
166 broken, baring bullet wounds or other wounds, lacerated,
167 dismembered, or decapitated. As such, photographs and video and
168 audio recordings that depict or record the killing of a victim
169 of mass violence are highly sensitive representations of the
170 deceased which, if heard, viewed, copied, or publicized, could
171 result in trauma, sorrow, humiliation, or emotional injury to
172 the immediate family of the deceased and detract from the memory
173 of the deceased. The Legislature recognizes that the existence
174 of the Internet and the proliferation of personal computers and

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175 cellular telephones throughout the world encourages and promotes
176 the wide dissemination of such photographs and video and audio
177 recordings 24 hours a day and that widespread unauthorized
178 dissemination of such photographs and video and audio recordings
179 would subject the immediate family of the deceased to continuous
180 injury.

181 (2) In addition to the emotional and mental injury that
182 these photographs and video and audio recordings may cause
183 family members, the Legislature is also concerned that
184 dissemination of photographs and video and audio recordings that
185 depict or record the killing of a victim of mass shooting is
186 harmful to the public. The Legislature is gravely concerned and
187 saddened by the horrific mass killings perpetrated at the Pulse
188 nightclub in Orlando, at the Fort Lauderdale-Hollywood
189 International Airport, and at Marjory Stoneman Douglas High
190 School. The Legislature is concerned that, if these photographs
191 and video and audio recordings are released, terrorists will use
192 them to attract followers, bring attention to their causes, and
193 inspire others to kill. The Legislature also finds that
194 dissemination of these photographs and video and audio
195 recordings may also educe violent acts by persons who have a
196 mental illness or who are morally corrupt.

197 (3) The Legislature further recognizes that other types of
198 information, such as crime scene reports, continue to be
199 available which are less intrusive and injurious to the
200 immediate family of the deceased and continue to provide for
201 public oversight. The Legislature further finds that the
202 exemption provided in this act should be given retroactive
203 application because it is remedial in nature.

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204 Section 3. The Division of Law Revision is directed to
205 replace the phrase "the effective date of this act" wherever it
206 occurs in this act with the date this act becomes a law.

207 Section 4. This act shall take effect upon becoming a law.