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1  
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.

43 2.~~(2)~~ A photograph or video or audio recording that depicts  
44 or records the killing of a law enforcement officer who was  
45 acting in accordance with his or her official duties or the  
46 killing of a victim of mass violence is confidential and exempt  
47 from s. 119.07(1) and s. 24(a), Art. I of the State  
48 Constitution, except that a surviving spouse of the decedent may  
49 view and copy any such photograph or video recording or listen  
50 to or copy any such audio recording. If there is no surviving  
51 spouse, ~~then~~ the surviving parents shall have access to such  
52 records. If there is no surviving spouse or parent, the ~~then an~~  
53 adult children child shall have access to such records. Nothing  
54 in this paragraph precludes a surviving spouse, parent, or adult  
55 child of the victim from sharing or publicly releasing such  
56 photograph or video or audio recording.

57 3.a.~~(3)~~~~(a)~~ The deceased's surviving relative, with whom  
58 authority rests to obtain such records, may designate in writing

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59 an agent to obtain such records.

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

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

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

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

85 (I)~~1~~. Whether such disclosure is necessary for the public  
86 evaluation of governmental performance;

87 (II)~~2~~. The seriousness of the intrusion into the family's

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88 right to privacy and whether such disclosure is the least  
89 intrusive means available; and

90 (III)~~3~~. The availability of similar information in other  
91 public records, regardless of form.

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

99 5.~~(5)~~ A surviving spouse shall be given reasonable notice  
100 of a petition filed with the court to view or copy a photograph  
101 or video recording that depicts or records the killing of a law  
102 enforcement officer who was acting in accordance with his or her  
103 official duties or the killing of a victim of mass violence, or  
104 to listen to or copy any such audio recording, a copy of such  
105 petition, and reasonable notice of the opportunity to be present  
106 and heard at any hearing on the matter. If there is no surviving  
107 spouse, ~~then~~ such notice must be given to the parents of the  
108 deceased and, if the deceased has no surviving ~~living~~ parent,  
109 ~~then~~ to the adult children of the deceased.

110 6.a.~~(6)~~~~(a)~~ Any custodian of a photograph or video or audio  
111 recording that depicts or records the killing of a law  
112 enforcement officer who was acting in accordance with his or her  
113 official duties or the killing of a victim of mass violence who  
114 willfully and knowingly violates this paragraph ~~section~~ commits  
115 a felony of the third degree, punishable as provided in s.  
116 775.082, s. 775.083, or s. 775.084.

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

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

130            7.~~(7)~~ The ~~This~~ exemption in this paragraph shall be given  
131 retroactive application and shall apply to all photographs or  
132 video or audio recordings that depict or record the killing of a  
133 law enforcement officer who was acting in accordance with his or  
134 her official duties or the killing of a victim of mass violence,  
135 regardless of whether the killing of the person occurred before,  
136 on, or after the effective date of this act ~~July 1, 2011~~.  
137 However, nothing in this paragraph ~~herein~~ is intended to, nor  
138 may be construed to, overturn or abrogate or alter any existing  
139 orders duly entered into by any court of this state, as of the  
140 effective date of this act, which restrict or limit access to  
141 any photographs or video or audio recordings that depict or  
142 record the killing of a law enforcement officer who was acting  
143 in accordance with his or her official duties or the killing of  
144 a victim of mass violence.

145            8.~~(8)~~ This paragraph ~~section~~ ~~only~~ applies only to such

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146 photographs and video and audio recordings held by an agency ~~as~~  
147 ~~defined in s. 119.011.~~

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

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

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175 dissemination of such photographs and video and audio recordings  
176 would subject the immediate family of the deceased to continuous  
177 injury.

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

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

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

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