

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 video or audio
7 recording held by an agency that depicts or records
8 the killing of a law enforcement officer to include a
9 photograph or video or audio recording held by an
10 agency that depicts or records the killing of a victim
11 of mass violence; providing criminal penalties;
12 providing for retroactive application; providing for
13 future legislative review and repeal of the exemption;
14 conforming provisions to changes made by the act;
15 providing a statement of public necessity; providing a
16 directive to the Division of Law Revision; providing
17 an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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

24 119.071 General exemptions from inspection or copying of
25 public records.—

26 (2) AGENCY INVESTIGATIONS.—

27 ~~406.136 A photograph or video or audio recording that~~
 28 ~~depicts or records the killing of a law enforcement officer who~~
 29 ~~was acting in accordance with his or her official duties.—~~

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 all acts
 39 or events that cause or otherwise relate to the death of a
 40 person, not including the perpetrator, who is killed in an
 41 incident in which three or more people, not including the
 42 perpetrator, are killed by an intentional act of violence by
 43 another person.

44 2.(2) A photograph or video or audio recording that
 45 depicts or records the killing of a law enforcement officer who
 46 was acting in accordance with his or her official duties or the
 47 killing of a victim of mass violence is confidential and exempt
 48 from s. 119.07(1) and s. 24(a), Art. I of the State
 49 Constitution, except that a surviving spouse of the decedent may
 50 view and copy any such photograph or video recording or listen

51 to or copy any such audio recording. If there is no surviving
52 spouse, ~~then~~ the surviving parents shall have access to such
53 records. If there is no surviving spouse or parent, the ~~then an~~
54 adult children ~~child~~ shall have access to such records.

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

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

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

71 4.a.(4)(a) The court, upon a showing of good cause, may
72 issue an order authorizing any person to view or copy a
73 photograph or video recording that depicts or records the
74 killing of a law enforcement officer who was acting in
75 accordance with his or her official duties or the killing of a

76 | victim of mass violence, or to listen to or copy an audio
77 | recording that depicts or records the killing of a law
78 | enforcement officer who was acting in accordance with his or her
79 | official duties or the killing of a victim of mass violence, and
80 | may prescribe any restrictions or stipulations that the court
81 | deems appropriate.

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

83 | (I)1. Whether such disclosure is necessary for the public
84 | evaluation of governmental performance;

85 | (II)2. The seriousness of the intrusion into the family's
86 | right to privacy and whether such disclosure is the least
87 | intrusive means available; and

88 | (III)3. The availability of similar information in other
89 | public records, regardless of form.

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

97 | ~~5.(5)~~ A surviving spouse shall be given reasonable notice
98 | of a petition filed with the court to view or copy a photograph
99 | or video recording that depicts or records the killing of a law
100 | enforcement officer who was acting in accordance with his or her

101 official duties or the killing of a victim of mass violence, or
102 to listen to or copy any such audio recording, a copy of such
103 petition, and reasonable notice of the opportunity to be present
104 and heard at any hearing on the matter. If there is no surviving
105 spouse, ~~then~~ such notice must be given to the parents of the
106 deceased and, if the deceased has no surviving ~~living~~ parent,
107 ~~then~~ to the adult children of the deceased.

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

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

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

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126 recording recordings in the manner prescribed in this paragraph
127 herein.

128 7.(7) The ~~This~~ exemption in this paragraph shall be given
129 retroactive application and shall apply to all photographs or
130 video or audio recordings that depict or record the killing of a
131 law enforcement officer who was acting in accordance with his or
132 her official duties or the killing of a victim of mass violence,
133 regardless of whether the killing of the person occurred before,
134 on, or after the effective date of this act July 1, 2011.

135 However, nothing in this paragraph ~~herein~~ is intended to, nor
136 may be construed to, overturn or abrogate or alter any existing
137 orders duly entered into by any court of this state, as of the
138 effective date of this act, which restrict or limit access to
139 any photographs or video or audio recordings that depict or
140 record the killing of a law enforcement officer who was acting
141 in accordance with his or her official duties or the killing of
142 a victim of mass violence.

143 8.(8) This paragraph ~~section~~ only applies to such
144 photographs and video and audio recordings held by an agency ~~as~~
145 ~~defined in s. 119.011.~~

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

150 Section 2. (1) The Legislature finds that it is a public

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

175 (2) In addition to the emotional and mental injury that

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

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

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

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