

FOR CONSIDERATION By the Committee on Criminal Justice

591-00875-16

20167022pb

1 A bill to be entitled

2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 406.136, F.S., which
4 provides an exemption from public records requirements
5 for a photograph or video or audio recording held by
6 an agency that depicts or records the killing of a
7 person; removing the scheduled repeal of the
8 exemption; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Section 406.136, Florida Statutes, is amended to
13 read:

14 406.136 A photograph or video or audio recording that
15 depicts or records the killing of a person.—

16 (1) As used in this section, the term "killing of a person"
17 means all acts or events that cause or otherwise relate to the
18 death of any human being, 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 (2) A photograph or video or audio recording that depicts
22 or records the killing of a person is confidential and exempt
23 from s. 119.07(1) and s. 24(a), Art. I of the State
24 Constitution, except that a surviving spouse of the decedent may
25 view and copy any such photograph or video recording or listen
26 to or copy any such audio recording. If there is no surviving
27 spouse, then the surviving parents shall have access to such
28 records. If there is no surviving spouse or parent, then an
29 adult child shall have access to such records.

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

33 (b) A local governmental entity, or a state or federal
34 agency, in furtherance of its official duties, pursuant to a
35 written request, may view or copy a photograph or video
36 recording or may listen to or copy an audio recording of the
37 killing of a person and, unless otherwise required in the
38 performance of their duties, the identity of the deceased shall
39 remain confidential and exempt.

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

44 (4) (a) The court, upon a showing of good cause, may issue
45 an order authorizing any person to view or copy a photograph or
46 video recording that depicts or records the killing of a person
47 or to listen to or copy an audio recording that depicts or
48 records the killing of a person and may prescribe any
49 restrictions or stipulations that the court deems appropriate.

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

51 1. Whether such disclosure is necessary for the public
52 evaluation of governmental performance;

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

56 3. The availability of similar information in other public
57 records, regardless of form.

58 (c) In all cases, the viewing, copying, listening to, or

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59 other handling of a photograph or video or audio recording that
60 depicts or records the killing of a person must be under the
61 direct supervision of the custodian of the record or his or her
62 designee.

63 (5) A surviving spouse shall be given reasonable notice of
64 a petition filed with the court to view or copy a photograph or
65 video recording that depicts or records the killing of a person
66 or to listen to or copy any such audio recording, a copy of such
67 petition, and reasonable notice of the opportunity to be present
68 and heard at any hearing on the matter. If there is no surviving
69 spouse, then such notice must be given to the parents of the
70 deceased and, if the deceased has no living parent, then to the
71 adult children of the deceased.

72 (6) (a) Any custodian of a photograph or video or audio
73 recording that depicts or records the killing of a person who
74 willfully and knowingly violates this section commits a felony
75 of the third degree, punishable as provided in s. 775.082, s.
76 775.083, or s. 775.084.

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

81 (c) A criminal or administrative proceeding is exempt from
82 this section but, unless otherwise exempted, is subject to all
83 other provisions of chapter 119, provided however that this
84 section does not prohibit a court in a criminal or
85 administrative proceeding upon good cause shown from restricting
86 or otherwise controlling the disclosure of a killing, crime
87 scene, or similar photograph or video or audio recordings in the

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88 manner prescribed herein.

89 (7) This exemption shall be given retroactive application
90 and shall apply to all photographs or video or audio recordings
91 that depict or record the killing of a person, regardless of
92 whether the killing of the person occurred before, on, or after
93 July 1, 2011. However, nothing herein is intended to, nor may be
94 construed to, overturn or abrogate or alter any existing orders
95 duly entered into by any court of this state, as of the
96 effective date of this act, which restrict or limit access to
97 any photographs or video or audio recordings that depict or
98 record the killing of a person.

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

101 ~~(9) This section is subject to the Open Government Sunset~~
102 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
103 ~~on October 2, 2016, unless reviewed and saved from repeal~~
104 ~~through reenactment by the Legislature.~~

105 Section 2. This act shall take effect October 1, 2016.