

ENROLLED
CS/HB 411

2011 Legislature

1 A bill to be entitled
2 An act relating to public records; providing a definition;
3 providing an exemption from public records requirements
4 for photographs and video and audio recordings that depict
5 or record the killing of a person; authorizing access to
6 such photographs or video or audio recordings by specified
7 members of the immediate family of the deceased subject of
8 the photographs or video or audio recordings; providing
9 for access to such records by local governmental entities
10 or state or federal agencies in furtherance of official
11 duties; providing for access pursuant to court order;
12 providing guidelines of the court in issuing an order
13 authorizing such photographs or video or audio recordings
14 to be viewed, copied, or heard; requiring specified notice
15 of a court petition to view or copy such records;
16 providing penalties; exempting criminal or administrative
17 proceedings from the act; providing for retroactive
18 application; providing for future legislative review and
19 repeal of the exemption; providing a finding of public
20 necessity; providing an effective date.

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

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24 Section 1. (1) As used in this section, the term "killing
25 of a person" means all acts or events that cause or otherwise
26 relate to the death of any human being, including any related
27 acts or events immediately preceding or subsequent to the acts
28 or events that were the proximate cause of death.

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29 (2) A photograph or video or audio recording that depicts
30 or records the killing of a person is confidential and exempt
31 from section 119.07(1), Florida Statutes, and Section 24(a),
32 Article I of the State Constitution, except that a surviving
33 spouse of the decedent may view and copy any such photograph or
34 video recording or listen to or copy any such audio recording.
35 If there is no surviving spouse, then the surviving parents
36 shall have access to such records. If there is no surviving
37 spouse or parent, then an adult child shall have access to such
38 records.

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

42 (b) A local governmental entity, or a state or federal
43 agency, in furtherance of its official duties, pursuant to a
44 written request, may view or copy a photograph or video
45 recording or may listen to or copy an audio recording of the
46 killing of a person and, unless otherwise required in the
47 performance of their duties, the identity of the deceased shall
48 remain confidential and exempt.

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

53 (4) (a) The court, upon a showing of good cause, may issue
54 an order authorizing any person to view or copy a photograph or
55 video recording that depicts or records the killing of a person
56 or to listen to or copy an audio recording that depicts or

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57 records the killing of a person and may prescribe any
58 restrictions or stipulations that the court deems appropriate.

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

60 1. Whether such disclosure is necessary for the public
61 evaluation of governmental performance;

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

65 3. The availability of similar information in other public
66 records, regardless of form.

67 (c) In all cases, the viewing, copying, listening to, or
68 other handling of a photograph or video or audio recording that
69 depicts or records the killing of a person must be under the
70 direct supervision of the custodian of the record or his or her
71 designee.

72 (5) A surviving spouse shall be given reasonable notice of
73 a petition filed with the court to view or copy a photograph or
74 video recording that depicts or records the killing of a person
75 or to listen to or copy any such audio recording, a copy of such
76 petition, and reasonable notice of the opportunity to be present
77 and heard at any hearing on the matter. If there is no surviving
78 spouse, then such notice must be given to the parents of the
79 deceased and, if the deceased has no living parent, then to the
80 adult children of the deceased.

81 (6) (a) Any custodian of a photograph or video or audio
82 recording that depicts or records the killing of a person who
83 willfully and knowingly violates this section commits a felony

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84 of the third degree, punishable as provided in section 775.082,
85 section 775.083, or section 775.084, Florida Statutes.

86 (b) Any person who willfully and knowingly violates a
87 court order issued pursuant to this section commits a felony of
88 the third degree, punishable as provided in section 775.082,
89 section 775.083, or section 775.084, Florida Statutes.

90 (c) A criminal or administrative proceeding is exempt from
91 this section but, unless otherwise exempted, is subject to all
92 other provisions of chapter 119, Florida Statutes, provided
93 however that this section does not prohibit a court in a
94 criminal or administrative proceeding upon good cause shown from
95 restricting or otherwise controlling the disclosure of a
96 killling, crime scene, or similar photograph or video or audio
97 recordings in the manner prescribed herein.

98 (7) This exemption shall be given retroactive application
99 and shall apply to all photographs or video or audio recordings
100 that depict or record the killing of a person, regardless of
101 whether the killing of the person occurred before, on, or after
102 July 1, 2011. However, nothing herein is intended to, nor may be
103 construed to, overturn or abrogate or alter any existing orders
104 duly entered into by any court of this state, as of the
105 effective date of this act, which restrict or limit access to
106 any photographs or video or audio recordings that depict or
107 record the killing of a person.

108 (8) This section only applies to such photographs and
109 video and audio recordings held by an agency as defined in
110 section 119.011, Florida Statutes.

111 (9) This section is subject to the Open Government Sunset

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112 Review Act in accordance with section 119.15, Florida Statutes,
113 and shall stand repealed on October 2, 2016, unless reviewed and
114 saved from repeal through reenactment by the Legislature.

115 Section 2. The Legislature finds that is a public
116 necessity that photographs and video and audio recordings that
117 depict or record the killing of any person be made confidential
118 and exempt from the requirements of section 119.07(1), Florida
119 Statutes, and Section 24(a) of Article I of the State
120 Constitution. The Legislature finds that photographs or video or
121 audio recordings that depict or record the killing of any person
122 render a visual or aural representation of the deceased in
123 graphic and often disturbing fashion. Such photographs or video
124 or audio recordings provide a view of the deceased in the final
125 moments of life, often bruised, bloodied, broken, with bullet
126 wounds or other wounds, cut open, dismembered, or decapitated.
127 As such, photographs or video or audio recordings that depict or
128 record the killing of any person are highly sensitive
129 representations of the deceased which, if heard, viewed, copied
130 or publicized, could result in trauma, sorrow, humiliation, or
131 emotional injury to the immediate family of the deceased, as
132 well as injury to the memory of the deceased. The Legislature
133 recognizes that the existence of the World Wide Web and the
134 proliferation of personal computers throughout the world
135 encourages and promotes the wide dissemination of such
136 photographs and video and audio recordings 24 hours a day and
137 that widespread unauthorized dissemination of photographs and
138 video and audio recordings would subject the immediate family of
139 the deceased to continuous injury. The Legislature further

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140 recognizes that there continue to be other types of available
141 information, such as crime scene reports, which are less
142 intrusive and injurious to the immediate family members of the
143 deceased and which continue to provide for public oversight. The
144 Legislature further finds that the exemption provided in this
145 act should be given retroactive application, except as otherwise
146 provided, because it is remedial in nature.

147 Section 3. This act shall take effect July 1, 2011.