

By Senator Bracy

11-00947-17

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1                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       406.136, F.S.; expanding a public records exemption  
4       for photographs, videos, or audio recordings that  
5       depict or record the killing of a law enforcement  
6       officer to include the killing of any person;  
7       redefining a term; expanding restrictions on the  
8       viewing, copying, listening to, or other handling of a  
9       photograph or video or audio recording that depicts  
10      the killing of any person rather than only depicting  
11      the killing of a law enforcement officer who was  
12      acting in accordance with his or her official duties;  
13      expanding a public records exemption to include  
14      records depicting the killing of any person; providing  
15      retroactive application of the exemption; providing a  
16      statement of public necessity; providing for  
17      retroactive application; providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21       Section 1. Section 406.136, Florida Statutes, is amended to  
22       read:

23       406.136 A photograph or video or audio recording that  
24       depicts or records the killing of a person ~~law enforcement~~  
25       ~~officer who was acting in accordance with his or her official~~  
26       ~~duties.~~

27       (1) As used in this section, the term "killing of a person  
28       ~~law enforcement officer who was acting in accordance with his or~~  
29       ~~her official duties"~~ means all acts or events that cause or

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30 otherwise relate to the death of a person ~~law enforcement~~  
31 ~~officer who was acting in accordance with his or her official~~  
32 ~~duties~~, including any related acts or events immediately  
33 preceding or subsequent to the acts or events that were the  
34 proximate cause of death.

35 (2) A photograph or video or audio recording that depicts  
36 or records the killing of a person ~~law enforcement officer who~~  
37 ~~was acting in accordance with his or her official duties~~ is  
38 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
39 of the State Constitution, except that a surviving spouse of the  
40 decedent may view and copy any such photograph or video  
41 recording or listen to or copy any such audio recording. If  
42 there is no surviving spouse, then the surviving parents shall  
43 have access to such records. If there is no surviving spouse or  
44 parent, then an adult child shall have access to such records.

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

48 (b) An employee or agent of a local governmental entity, or  
49 a state or federal agency, in furtherance of its official  
50 duties, pursuant to a written request, may view or copy a  
51 photograph or video recording or may listen to or copy an audio  
52 recording of the killing of a person ~~law enforcement officer who~~  
53 ~~was acting in accordance with his or her official duties~~ and,  
54 unless otherwise required in the performance of its ~~their~~  
55 duties, the identity of the deceased shall remain confidential  
56 and exempt.

57 (c) The custodian of the record, or his or her designee,  
58 may not permit any other person to view or copy such photograph

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59 or video recording or listen to or copy such audio recording  
60 without a court order.

61 (4) (a) The court, upon a showing of good cause, may issue  
62 an order authorizing any person to view or copy a photograph or  
63 video recording that depicts or records the killing of a person  
64 ~~law enforcement officer who was acting in accordance with his or~~  
65 ~~her official duties~~ or to listen to or copy an audio recording  
66 that depicts or records the killing of a person ~~law enforcement~~  
67 ~~officer who was acting in accordance with his or her official~~  
68 ~~duties~~ and may prescribe any restrictions or stipulations that  
69 the court deems appropriate.

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

71 1. Whether such disclosure is necessary for the public  
72 evaluation of governmental performance;

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

76 3. The availability of similar information in other public  
77 records, regardless of form.

78 (c) In all cases, the viewing, copying, listening to, or  
79 other handling of a photograph or video or audio recording that  
80 depicts or records the killing of a person ~~law enforcement~~  
81 ~~officer who was acting in accordance with his or her official~~  
82 ~~duties~~ must be under the direct supervision of the custodian of  
83 the record or his or her designee.

84 (5) A surviving spouse shall be given reasonable notice of  
85 a petition filed with the court to view or copy a photograph or  
86 video recording that depicts or records the killing of a person  
87 ~~law enforcement officer who was acting in accordance with his or~~

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88 ~~her official duties~~ or to listen to or copy any such audio  
89 recording, a copy of such petition, and reasonable notice of the  
90 opportunity to be present and heard at any hearing on the  
91 matter. If there is no surviving spouse, then such notice must  
92 be given to the parents of the deceased and, if the deceased has  
93 no living parent, then to the adult children of the deceased.

94 (6) (a) Any custodian of a photograph or video or audio  
95 recording that depicts or records the killing of a person ~~law~~  
96 ~~enforcement officer who was acting in accordance with his or her~~  
97 ~~official duties~~ who willfully and knowingly violates this  
98 section commits a felony of the third degree, punishable as  
99 provided in s. 775.082, s. 775.083, or s. 775.084.

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

104 (c) A criminal or administrative proceeding is exempt from  
105 this section but, unless otherwise exempted, is subject to all  
106 other provisions of chapter 119, provided however that this  
107 section does not prohibit a court in a criminal or  
108 administrative proceeding upon good cause shown from restricting  
109 or otherwise controlling the disclosure of a killing, crime  
110 scene, or similar photograph or video or audio recordings in the  
111 manner prescribed herein.

112 (7) This exemption shall be given retroactive application  
113 and shall apply to all photographs or video or audio recordings  
114 that depict or record the killing of a person ~~law enforcement~~  
115 ~~officer who was acting in accordance with his or her official~~  
116 ~~duties, regardless of whether the killing of the person occurred~~

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117 before, on, or after the effective date of the exemption ~~July 1,~~  
118 ~~2011~~. However, nothing herein is intended to, nor may be  
119 construed to, overturn or abrogate or alter any existing orders  
120 duly entered into by any court of this state, as of the  
121 effective date of this act, which restrict or limit access to  
122 any photographs or video or audio recordings that depict or  
123 record the killing of a person ~~law enforcement officer who was~~  
124 ~~acting in accordance with his or her official duties.~~

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

127 Section 2. The Legislature finds that is a public necessity  
128 that photographs and video and audio recordings that depict or  
129 record the killing of any person be made confidential and exempt  
130 from the requirements of section 119.07(1), Florida Statutes,  
131 and s. 24(a), Art. I of the State Constitution before, on, or  
132 after the effective date of the exemption. The Legislature finds  
133 that photographs or video or audio recordings that depict or  
134 record the killing of any person render a visual or aural  
135 representation of the deceased in graphic and often disturbing  
136 fashion. Such photographs or video or audio recordings provide a  
137 view of the deceased in the final moments of life, often  
138 bruised, bloodied, broken, with bullet wounds or other wounds,  
139 cut open, dismembered, or decapitated. As such, photographs or  
140 video or audio recordings that depict or record the killing of  
141 any person are highly sensitive representations of the deceased  
142 which, if heard, viewed, copied or publicized, could result in  
143 trauma, sorrow, humiliation, or emotional injury to the  
144 immediate family of the deceased, as well as injury to the  
145 memory of the deceased. The Legislature recognizes that the

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146 existence of the Internet and the proliferation of cellular  
147 phones throughout the world encourages and promotes the  
148 wide dissemination of such photographs and video and audio  
149 recordings 24 hours a day and that widespread unauthorized  
150 dissemination of photographs and video and audio recordings  
151 would subject the immediate family of the deceased to continuous  
152 injury. The Legislature further recognizes that there continue  
153 to be other types of available information, such as crime scene  
154 reports, which are less intrusive and injurious to the immediate  
155 family members of the deceased and which continue to provide for  
156 public oversight. The Legislature further finds that the  
157 exemption provided in this act should be given retroactive  
158 application, except as otherwise provided, because it is  
159 remedial in nature.

160 Section 3. This act shall take effect July 1, 2017.