

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Willhite offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 406.136, Florida Statutes, is amended
6 to read:

7 406.136 A photograph or video or audio recording that
8 depicts or records the killing of a law enforcement officer who
9 was acting in accordance with his or her official duties,
10 killing of a victim of a school shooting, and killing of a
11 victim of a mass shooting.-

12 (1) As used in this section, the term:

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13 (a) "Killing of a law enforcement officer who was acting
14 in accordance with his or her official duties" means all acts or
15 events that cause or otherwise relate to the death of a law
16 enforcement officer who was acting in accordance with his or her
17 official duties, including any related acts or events
18 immediately preceding or subsequent to the acts or events that
19 were the proximate cause of death.

20 (b) "Killing of a victim of a school shooting" means all
21 acts or events that cause or otherwise relate to the death of a
22 person, not including the perpetrator, who is killed in a school
23 shooting, including any related acts or events immediately
24 preceding or subsequent to the acts or events that were the
25 proximate cause of death.

26 (c) "Killing of a victim of a mass shooting" means all
27 acts or events that cause or otherwise relate to the death of a
28 person, not including the perpetrator, who is killed in an
29 incident in which three or more people, not including the
30 perpetrator, are killed by an intentional act of gun violence by
31 another.

32 (2) A photograph or video or audio recording that depicts
33 or records the killing of a law enforcement officer who was
34 acting in accordance with his or her official duties, killing of
35 a victim of a school shooting, or killing of a victim of a mass
36 shooting is confidential and exempt from s. 119.07(1) and s.
37 24(a), Art. I of the State Constitution, except that a surviving

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38 spouse of the decedent may view and copy any such photograph or
39 video recording or listen to or copy any such audio recording.
40 If there is no surviving spouse, ~~then~~ the surviving parents
41 shall have access to such records. If there is no surviving
42 spouse or parent, the ~~then an~~ adult children ~~child~~ shall have
43 access to such records.

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

47 (b) A local governmental entity, or a state or federal
48 agency, in furtherance of its official duties, pursuant to a
49 written request, may view or copy a photograph or video
50 recording or may listen to or copy an audio recording of the
51 killing of a law enforcement officer who was acting in
52 accordance with his or her official duties, killing of a victim
53 of a school shooting, or killing of a victim of a mass shooting,
54 and, 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
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

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63 video recording that depicts or records the killing of a law
64 enforcement officer who was acting in accordance with his or her
65 official duties, killing of a victim of a school shooting, or
66 killing of a victim of a mass shooting or to listen to or copy
67 an audio recording that depicts or records the killing of a law
68 enforcement officer who was acting in accordance with his or her
69 official duties, killing of a victim of a school shooting, or
70 killing of a victim of a mass shooting and may prescribe any
71 restrictions or stipulations that the court deems appropriate.

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

73 1. Whether such disclosure is necessary for the public
74 evaluation of governmental performance;

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

78 3. The availability of similar information in other public
79 records, regardless of form.

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

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87 (5) A surviving spouse shall be given reasonable notice of
88 a petition filed with the court to view or copy a photograph or
89 video recording that depicts or records the killing of a law
90 enforcement officer who was acting in accordance with his or her
91 official duties, a victim of a school shooting, or a victim of a
92 mass shooting or to listen to or copy any such audio recording,
93 a copy of such petition, and reasonable notice of the
94 opportunity to be present and heard at any hearing on the
95 matter. If there is no surviving spouse, ~~then~~ such notice must
96 be given to the parents of the deceased and, if the deceased has
97 no surviving living parent, ~~then~~ to the adult children of the
98 deceased.

99 (6) (a) Any custodian of a photograph or video or audio
100 recording that depicts or records the killing of a law
101 enforcement officer who was acting in accordance with his or her
102 official duties, killing of a victim of a school shooting, or
103 killing of a victim of a mass shooting who willfully and
104 knowingly violates this section commits a felony of the third
105 degree, punishable as provided in s. 775.082, s. 775.083, or s.
106 775.084.

107 (b) Any person who willfully and knowingly violates a
108 court order issued pursuant to this section commits a felony of
109 the third degree, punishable as provided in s. 775.082, s.
110 775.083, or s. 775.084.

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111 (c) A criminal or administrative proceeding is exempt from
112 this section but, unless otherwise exempted, is subject to all
113 other provisions of chapter 119; ~~7~~ provided, however, ~~that~~ this
114 section does not prohibit a court in a criminal or
115 administrative proceeding upon good cause shown from restricting
116 or otherwise controlling the disclosure of a killing, crime
117 scene, or similar photograph or video or audio recording
118 ~~recordings~~ in the manner prescribed in this section herein.

119 (7) The ~~This~~ exemption in this section shall be given
120 retroactive application and shall apply to all photographs or
121 video or audio recordings that depict or record the killing of a
122 law enforcement officer who was acting in accordance with his or
123 her official duties, killing of a victim of a school shooting,
124 or killing of a victim of a mass shooting regardless of whether
125 the killing of the person occurred before, on, or after July 1,
126 2015 ~~2011~~. However, nothing in this section herein is intended
127 to, nor may be construed to, overturn or abrogate or alter any
128 existing orders duly entered into by any court of this state, as
129 of the effective date of this act, which restrict or limit
130 access to any photographs or video or audio recordings that
131 depict or record the killing of a law enforcement officer who
132 was acting in accordance with his or her official duties,
133 killing of a victim of a school shooting, or killing of a victim
134 of a mass shooting.

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135 (8) This section only applies to such photographs and
136 video and audio recordings held by an agency as defined in s.
137 119.011.

138 (9) This section is subject to the Open Government Sunset
139 Review Act in accordance with s. 119.15 and shall stand repealed
140 on October 2, 2023, unless reviewed and saved from repeal
141 through reenactment by the Legislature.

142 Section 2. (1) The Legislature finds that it is a public
143 necessity that photographs and video and audio recordings that
144 depict or record the killing of a victim of a school shooting or
145 killing of a victim of a mass shooting be made confidential and
146 exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I
147 of the State Constitution. The Legislature finds that
148 photographs and video and audio recordings that depict or record
149 the killing of a victim of a school shooting or killing of a
150 victim of a mass shooting render a graphic and often disturbing
151 visual or aural representation of the deceased. Such photographs
152 and video and audio recordings provide a view of the deceased in
153 the final moments of life, often bruised, bloodied, broken, with
154 bullet wounds or other wounds, cut open, dismembered, or
155 decapitated. As such, photographs and video and audio recordings
156 that depict or record the killing of a victim of a school
157 shooting or killing of a victim of a mass shooting are highly
158 sensitive representations of the deceased which, if heard,
159 viewed, copied, or publicized, could result in trauma, sorrow,

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160 humiliation, or emotional injury to the immediate family of the
161 deceased and detract from the memory of the deceased. The
162 Legislature recognizes that the existence of the Internet and
163 the proliferation of personal computers and cellular telephones
164 throughout the world encourages and promotes the wide
165 dissemination of such photographs and video and audio recordings
166 24 hours a day and that widespread unauthorized dissemination of
167 such photographs and video and audio recordings would subject
168 the immediate family of the deceased to continuous injury.

169 (2) In addition to the emotional and mental injury that
170 these photographs and recordings may cause family members, the
171 Legislature is also concerned that dissemination of photographs
172 and video and audio recordings that depict or record the killing
173 of a victim of a school shooting or killing of a victim of a
174 mass shooting is harmful to the public. The Legislature is
175 gravely concerned and saddened by the horrific mass killings
176 perpetrated at the Pulse nightclub in Orlando, the Fort
177 Lauderdale-Hollywood International Airport, and at Marjory
178 Stoneman Douglas High School. The Legislature is concerned that,
179 if these photographs and recordings are released, terrorists
180 will use them to attract followers, bring attention to their
181 causes, and inspire others to kill. The Legislature also finds
182 that dissemination of these photographs and recordings may also
183 educate violent acts by the mentally ill or morally corrupt.

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184 (3) The Legislature further recognizes that there
 185 continues to be other types of available information, such as
 186 crime scene reports, which are less intrusive and injurious to
 187 the immediate family of the deceased and which continue to
 188 provide for public oversight. The Legislature further finds that
 189 the exemption provided in this act should be given retroactive
 190 application because it is remedial in nature.

191 Section 3. This act shall take effect upon becoming a law.

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T I T L E A M E N D M E N T

194 Remove everything before the enacting clause and insert:

195 A bill to be entitled

196 An act relating to public records; amending s.
 197 406.136, F.S.; expanding an exemption from public
 198 records requirements for a photograph or video or
 199 audio recording held by an agency that depicts or
 200 records the killing of a law enforcement officer to
 201 include a photograph or video or audio recording held
 202 by an agency that depicts or records the killing of a
 203 victim of a school shooting and the killing of a
 204 victim of a mass shooting; providing for future
 205 legislative review and repeal of the exemption;
 206 providing a statement of public necessity; providing
 207 an effective date.

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