

By Senator Bean

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1                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           406.136, F.S.; defining the term "killing of a  
4           person"; expanding an exemption from public records  
5           requirements for a photograph or video or audio  
6           recording held by an agency which depicts or records  
7           the killing of a law enforcement officer to include a  
8           photograph or video or audio recording held by an  
9           agency which depicts or records the killing of a  
10          person; specifying that the exemption from public  
11          records requirements does not apply to the killing of  
12          a person in the care and custody of a state agency;  
13          providing for future legislative review and repeal of  
14          the exemption; providing a statement of public  
15          necessity; providing retroactive application;  
16          providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20           Section 1. Section 406.136, Florida Statutes, is amended to  
21           read:

22           406.136 A photograph or video or audio recording that  
23           depicts or records the killing of a person ~~law enforcement~~  
24           ~~officer who was acting in accordance with his or her official~~  
25           ~~duties.~~

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

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30 ~~being a law enforcement officer who was acting in accordance~~  
31 ~~with his or her official duties, including any related acts or~~  
32 ~~events immediately preceding or subsequent to the acts or events~~  
33 ~~that were the proximate cause of death. The term does not~~  
34 ~~include the killing of a person in the care and custody of a~~  
35 ~~state agency.~~

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

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

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

58 (c) The custodian of the record, or his or her designee,

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59 may not permit any other person to view or copy such photograph  
60 or video recording or listen to or copy such audio recording  
61 without a court order.

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

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

- 72 1. Whether such disclosure is necessary for the public  
73 evaluation of governmental performance;
- 74 2. The seriousness of the intrusion into the family's right  
75 to privacy and whether such disclosure is the least intrusive  
76 means available; and
- 77 3. The availability of similar information in other public  
78 records, regardless of form.

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

85 (5) A surviving spouse shall be given reasonable notice of  
86 a petition filed with the court to view or copy a photograph or  
87 video recording that depicts or records the killing of a person

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

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

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

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

114 (7) The ~~This~~ exemption in this section shall be given  
115 retroactive application and shall apply to all photographs or  
116 video or audio recordings that depict or record the killing of a

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117 ~~person law enforcement officer who was acting in accordance with~~  
118 ~~his or her official duties,~~ regardless of whether the killing of  
119 the person occurred before, on, or after July 1, 2011. However,  
120 this section ~~nothing herein~~ is not intended to, and ~~nor~~ may not  
121 be construed to, overturn or abrogate or alter any existing  
122 orders duly entered into by any court of this state, as of the  
123 effective date of this act, which restrict or limit access to  
124 any photographs or video or audio recordings that depict or  
125 record the killing of a person law enforcement officer who was  
126 acting in accordance with his or her official duties.

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

129 (9) This section is subject to the Open Government Sunset  
130 Review Act in accordance with s. 119.15 and shall stand repealed  
131 on October 2, 2024, unless reviewed and saved from repeal  
132 through reenactment by the Legislature.

133 Section 2. (1) The Legislature finds that it is a public  
134 necessity that photographs and video and audio recordings that  
135 depict or record the killing of a person be made confidential  
136 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
137 Article I of the State Constitution. The Legislature finds that  
138 photographs and video and audio recordings that depict or record  
139 the killing of a person render a graphic and often disturbing  
140 visual or aural representation of the deceased. Such photographs  
141 and video and audio recordings provide a view of the deceased in  
142 the final moments of life, in which he or she is often bruised,  
143 bloodied, broken, bearing bullet wounds or other wounds,  
144 lacerated, dismembered, or decapitated. As such, photographs and  
145 video and audio recordings that depict or record the killing of

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146 a person are highly sensitive representations of the deceased  
147 which, if heard, viewed, copied, or publicized, could result in  
148 trauma, sorrow, humiliation, or emotional injury to the  
149 immediate family of the deceased and could detract from the  
150 memory of the deceased. The Legislature recognizes that the  
151 existence of the Internet and the proliferation of personal  
152 computers and cellular telephones throughout the world  
153 encourages and promotes the wide dissemination of such  
154 photographs and video and audio recordings and that widespread  
155 unauthorized dissemination of such photographs and video and  
156 audio recordings would subject the immediate family of the  
157 deceased to continuous injury.

158 (2) The Legislature further recognizes that there continues  
159 to be other types of available information, such as crime scene  
160 reports, which are less intrusive and injurious to the immediate  
161 family of the deceased and which continue to provide for public  
162 oversight. The Legislature further finds that the exemption  
163 provided in this act should be given retroactive application  
164 because it is remedial in nature.

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