

By Senator Lee

20-01583A-19

2019186\_\_

1                   A bill to be entitled  
2           An act relating to public records; transferring,  
3           renumbering, and amending s. 406.136, F.S.; defining  
4           the term "killing of a victim of mass violence";  
5           expanding an existing exemption from public records  
6           requirements for a photograph or a video or audio  
7           recording held by an agency which depicts or records  
8           the killing of a law enforcement officer to include a  
9           photograph or a video or audio recording held by an  
10          agency which depicts or records the killing of a  
11          victim of mass violence; providing criminal penalties;  
12          providing retroactive applicability; providing for  
13          future legislative review and repeal of the exemption;  
14          conforming provisions to changes made by the act;  
15          providing a statement of public necessity; providing a  
16          directive to the Division of Law Revision; providing  
17          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  
22           transferred, renumbered as paragraph (p) of subsection (2) of  
23           section 119.071, Florida Statutes, and amended, to read:

24           119.071 General exemptions from inspection or copying of  
25           public records.—

26           (2) AGENCY INVESTIGATIONS.—

27           (p)1.~~(1)~~ As used in this paragraph ~~section~~, the term:

28           a. "Killing of a law enforcement officer who was acting in  
29           accordance with his or her official duties" means all acts or

20-01583A-19

2019186\_\_

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

35 b. "Killing of a victim of mass violence" means all acts or  
36 events that cause or otherwise relate to the death of a person,  
37 not including the perpetrator, who is killed in an incident in  
38 which three or more people, not including the perpetrator, are  
39 killed by an intentional act of violence by another person.

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

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

54 b.(b) A local governmental entity, or a state or federal  
55 agency, in furtherance of its official duties, pursuant to a  
56 written request, may view or copy a photograph or video  
57 recording or may listen to or copy an audio recording of the  
58 killing of a law enforcement officer who was acting in

20-01583A-19

2019186\_\_

59 accordance with his or her official duties or the killing of a  
60 victim of mass violence, and, unless otherwise required in the  
61 performance of its ~~their~~ duties, the identity of the deceased  
62 shall remain confidential and exempt.

63 c.~~(e)~~ The custodian of the record, or his or her designee,  
64 may not permit any other person to view or copy such photograph  
65 or video recording or listen to or copy such audio recording  
66 without a court order.

67 4.a.~~(4)~~~~(a)~~ The court, upon a showing of good cause, may  
68 issue an order authorizing any person to view or copy a  
69 photograph or video recording that depicts or records the  
70 killing of a law enforcement officer who was acting in  
71 accordance with his or her official duties or the killing of a  
72 victim of mass violence, or to listen to or copy an audio  
73 recording that depicts or records the killing of a law  
74 enforcement officer who was acting in accordance with his or her  
75 official duties or the killing of a victim of mass violence, and  
76 may prescribe any restrictions or stipulations that the court  
77 deems appropriate.

78 b.~~(b)~~ In determining good cause, the court shall consider:

79 (I)~~1.~~ Whether such disclosure is necessary for the public  
80 evaluation of governmental performance;

81 (II)~~2.~~ The seriousness of the intrusion into the family's  
82 right to privacy and whether such disclosure is the least  
83 intrusive means available; and

84 (III)~~3.~~ The availability of similar information in other  
85 public records, regardless of form.

86 c.~~(e)~~ In all cases, the viewing, copying, listening to, or  
87 other handling of a photograph or video or audio recording that

20-01583A-19

2019186\_\_

88 depicts or records the killing of a law enforcement officer who  
89 was acting in accordance with his or her official duties or the  
90 killing of a victim of mass violence must be under the direct  
91 supervision of the custodian of the record or his or her  
92 designee.

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

104 6.a.~~(6)~~~~(a)~~ Any custodian of a photograph or video or audio  
105 recording that depicts or records the killing of a law  
106 enforcement officer who was acting in accordance with his or her  
107 official duties or the killing of a victim of mass violence who  
108 willfully and knowingly violates this paragraph ~~section~~ commits  
109 a felony of the third degree, punishable as provided in s.  
110 775.082, s. 775.083, or s. 775.084.

111 b.~~(b)~~ Any person who willfully and knowingly violates a  
112 court order issued pursuant to this paragraph ~~section~~ commits a  
113 felony of the third degree, punishable as provided in s.  
114 775.082, s. 775.083, or s. 775.084.

115 c.~~(c)~~ A criminal or administrative proceeding is exempt  
116 from this paragraph ~~section~~ but, unless otherwise exempted, is

20-01583A-19

2019186\_\_

117 subject to all other provisions of chapter 119; ~~provided~~  
118 however, that this paragraph section does not prohibit a court  
119 in a criminal or administrative proceeding upon good cause shown  
120 from restricting or otherwise controlling the disclosure of a  
121 killing, crime scene, or similar photograph or video or audio  
122 recording recordings in the manner prescribed in this paragraph  
123 herein.

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

139 8.~~(8)~~ This paragraph section ~~only~~ applies only to such  
140 photographs and video and audio recordings held by an agency ~~as~~  
141 ~~defined in s. 119.011~~.

142 9. This paragraph is subject to the Open Government Sunset  
143 Review Act in accordance with s. 119.15 and shall stand repealed  
144 on October 2, 2024, unless reviewed and saved from repeal  
145 through reenactment by the Legislature.

20-01583A-19

2019186\_\_

146           Section 2. (1) The Legislature finds that it is a public  
147 necessity that photographs and video and audio recordings that  
148 depict or record the killing of a victim of mass violence be  
149 made confidential and exempt from s. 119.07(1), Florida  
150 Statutes, and s. 24(a), Article I of the State Constitution. The  
151 Legislature finds that photographs and video and audio  
152 recordings that depict or record the killing of a victim of mass  
153 violence render a graphic and often disturbing visual or aural  
154 representation of the deceased. Such photographs and video and  
155 audio recordings provide a view of the deceased in the final  
156 moments of life, in which they are often bruised, bloodied,  
157 broken, baring bullet wounds or other wounds, lacerated,  
158 dismembered, or decapitated. As such, photographs and video and  
159 audio recordings that depict or record the killing of a victim  
160 of mass violence are highly sensitive representations of the  
161 deceased which, if heard, viewed, copied, or publicized, could  
162 result in trauma, sorrow, humiliation, or emotional injury to  
163 the immediate family of the deceased and detract from the memory  
164 of the deceased. The Legislature recognizes that the existence  
165 of the Internet and the proliferation of personal computers and  
166 cellular telephones throughout the world encourages and promotes  
167 the wide dissemination of such photographs and video and audio  
168 recordings 24 hours a day and that widespread unauthorized  
169 dissemination of such photographs and video and audio recordings  
170 would subject the immediate family of the deceased to continuous  
171 injury.

172           (2) In addition to the emotional and mental injury that  
173 these photographs and video and audio recordings may cause  
174 family members, the Legislature is also concerned that

20-01583A-19

2019186\_\_

175 dissemination of photographs and video and audio recordings that  
176 depict or record the killing of a victim of mass shooting is  
177 harmful to the public. The Legislature is gravely concerned and  
178 saddened by the horrific mass killings perpetrated at the Pulse  
179 nightclub in Orlando, at the Fort Lauderdale-Hollywood  
180 International Airport, and at Marjory Stoneman Douglas High  
181 School. The Legislature is concerned that, if these photographs  
182 and video and audio recordings are released, terrorists will use  
183 them to attract followers, bring attention to their causes, and  
184 inspire others to kill. The Legislature also finds that  
185 dissemination of these photographs and video and audio  
186 recordings may also educe violent acts by persons who have a  
187 mental illness or who are morally corrupt.

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

195 Section 3. The Division of Law Revision is directed to  
196 replace the phrase "the effective date of this act" wherever it  
197 occurs in this act with the date this act becomes a law.

198 Section 4. This act shall take effect upon becoming a law.