

2019186e1

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; clarifying that a surviving
12 spouse, parent, or adult child of the victim is not
13 precluded from publicly releasing such photograph or
14 video or audio recording; providing criminal
15 penalties; providing retroactive applicability;
16 providing for future legislative review and repeal of
17 the exemption; conforming provisions to changes made
18 by the act; providing a statement of public necessity;
19 providing a directive to the Division of Law Revision;
20 providing an effective date.

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

23
24 Section 1. Section 406.136, Florida Statutes, is
25 transferred, renumbered as paragraph (p) of subsection (2) of
26 section 119.071, Florida Statutes, and amended, to read:

27 119.071 General exemptions from inspection or copying of
28 public records.—

29 (2) AGENCY INVESTIGATIONS.—

2019186e1

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

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

38 b. "Killing of a victim of mass violence" means acts or
39 events that cause the death of a person, not including the
40 perpetrator, who is killed in an incident in which three or more
41 people, not including the perpetrator, are killed by an
42 intentional act of violence by another person. The term includes
43 acts or events that show a person being killed in such incident
44 or show the body of a person killed in such incident. The term
45 does not include such acts or events if the person who causes
46 the death is a public official or public employee who is acting
47 within the scope of his or her duties or under color of office.

48 2.~~(2)~~ A photograph or video or audio recording that depicts
49 or records the killing of a law enforcement officer who was
50 acting in accordance with his or her official duties or the
51 killing of a victim of mass violence is confidential and exempt
52 from s. 119.07(1) and s. 24(a), Art. I of the State
53 Constitution, except that a surviving spouse of the decedent may
54 view and copy any such photograph or video recording or listen
55 to or copy any such audio recording. If there is no surviving
56 spouse, ~~then~~ the surviving parents shall have access to such
57 records. If there is no surviving spouse or parent, the ~~then an~~
58 adult children ~~child~~ shall have access to such records. Nothing

2019186e1

59 in this paragraph precludes a surviving spouse, parent, or adult
60 child of the victim from sharing or publicly releasing such
61 photograph or video or audio recording.

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

65 b.(b) A local governmental entity, or a state or federal
66 agency, in furtherance of its official duties, pursuant to a
67 written request, may view or copy a photograph or video
68 recording or may listen to or copy an audio recording of the
69 killing of a law enforcement officer who was acting in
70 accordance with his or her official duties or the killing of a
71 victim of mass violence, and, unless otherwise required in the
72 performance of its ~~their~~ duties, the identity of the deceased
73 shall remain confidential and exempt.

74 c.(e) The custodian of the record, or his or her designee,
75 may not permit any other person to view or copy such photograph
76 or video recording or listen to or copy such audio recording
77 without a court order.

78 4.a.(4)(a) The court, upon a showing of good cause, may
79 issue an order authorizing any person to view or copy a
80 photograph or video recording that depicts or records the
81 killing of a law enforcement officer who was acting in
82 accordance with his or her official duties or the killing of a
83 victim of mass violence, or to listen to or copy an audio
84 recording that depicts or records the killing of a law
85 enforcement officer who was acting in accordance with his or her
86 official duties or the killing of a victim of mass violence, and
87 may prescribe any restrictions or stipulations that the court

2019186e1

88 deems appropriate.

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

90 (I) 1. Whether such disclosure is necessary for the public
91 evaluation of governmental performance;

92 (II) 2. The seriousness of the intrusion into the family's
93 right to privacy and whether such disclosure is the least
94 intrusive means available; and

95 (III) 3. The availability of similar information in other
96 public records, regardless of form.

97 ~~c. (c)~~ In all cases, the viewing, copying, listening to, or
98 other handling of a photograph or video or audio recording that
99 depicts or records the killing of a law enforcement officer who
100 was acting in accordance with his or her official duties or the
101 killing of a victim of mass violence must be under the direct
102 supervision of the custodian of the record or his or her
103 designee.

104 ~~5. (5)~~ A surviving spouse shall be given reasonable notice
105 of a petition filed with the court to view or copy a photograph
106 or video recording that depicts or records the killing of a law
107 enforcement officer who was acting in accordance with his or her
108 official duties or the killing of a victim of mass violence, or
109 to listen to or copy any such audio recording, a copy of such
110 petition, and reasonable notice of the opportunity to be present
111 and heard at any hearing on the matter. If there is no surviving
112 spouse, ~~then~~ such notice must be given to the parents of the
113 deceased and, if the deceased has no surviving ~~living~~ parent,
114 ~~then~~ to the adult children of the deceased.

115 ~~6.a. (6) (a)~~ Any custodian of a photograph or video or audio
116 recording that depicts or records the killing of a law

2019186e1

117 enforcement officer who was acting in accordance with his or her
118 official duties or the killing of a victim of mass violence who
119 willfully and knowingly violates this paragraph ~~section~~ commits
120 a felony of the third degree, punishable as provided in s.
121 775.082, s. 775.083, or s. 775.084.

122 ~~b.~~ Any person who willfully and knowingly violates a
123 court order issued pursuant to this paragraph ~~section~~ commits a
124 felony of the third degree, punishable as provided in s.
125 775.082, s. 775.083, or s. 775.084.

126 ~~c.~~ A criminal or administrative proceeding is exempt
127 from this paragraph ~~section~~ but, unless otherwise exempted, is
128 subject to all other provisions of chapter 119; ~~provided~~
129 however, ~~that~~ this paragraph ~~section~~ does not prohibit a court
130 in a criminal or administrative proceeding upon good cause shown
131 from restricting or otherwise controlling the disclosure of a
132 killing, crime scene, or similar photograph or video or audio
133 recording ~~recordings~~ in the manner prescribed in this paragraph
134 herein.

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

2019186e1

146 any photographs or video or audio recordings that depict or
147 record the killing of a law enforcement officer who was acting
148 in accordance with his or her official duties or the killing of
149 a victim of mass violence.

150 8.~~(8)~~ This paragraph ~~section only~~ applies only to such
151 photographs and video and audio recordings held by an agency ~~as~~
152 defined in s. 119.011.

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

157 Section 2. (1) The Legislature finds that it is a public
158 necessity that photographs and video and audio recordings that
159 depict or record the killing of a victim of mass violence be
160 made confidential and exempt from s. 119.07(1), Florida
161 Statutes, and s. 24(a), Article I of the State Constitution. The
162 Legislature finds that photographs and video and audio
163 recordings that depict or record the killing of a victim of mass
164 violence render a graphic and often disturbing visual or aural
165 representation of the deceased. Such photographs and video and
166 audio recordings provide a view of the deceased in the final
167 moments of life, in which they are often bruised, bloodied,
168 broken, baring bullet wounds or other wounds, lacerated,
169 dismembered, or decapitated. As such, photographs and video and
170 audio recordings that depict or record the killing of a victim
171 of mass violence are highly sensitive representations of the
172 deceased which, if heard, viewed, copied, or publicized, could
173 result in trauma, sorrow, humiliation, or emotional injury to
174 the immediate family of the deceased and detract from the memory

2019186e1

175 of the deceased. The Legislature recognizes that the existence
176 of the Internet and the proliferation of personal computers and
177 cellular telephones throughout the world encourages and promotes
178 the wide dissemination of such photographs and video and audio
179 recordings 24 hours a day and that widespread unauthorized
180 dissemination of such photographs and video and audio recordings
181 would subject the immediate family of the deceased to continuous
182 injury.

183 (2) In addition to the emotional and mental injury that
184 these photographs and video and audio recordings may cause
185 family members, the Legislature is also concerned that
186 dissemination of photographs and video and audio recordings that
187 depict or record the killing of a victim of mass shooting is
188 harmful to the public. The Legislature is gravely concerned and
189 saddened by the horrific mass killings perpetrated at the Pulse
190 nightclub in Orlando, at the Fort Lauderdale-Hollywood
191 International Airport, and at Marjory Stoneman Douglas High
192 School. The Legislature is concerned that, if these photographs
193 and video and audio recordings are released, terrorists will use
194 them to attract followers, bring attention to their causes, and
195 inspire others to kill. The Legislature also finds that
196 dissemination of these photographs and video and audio
197 recordings may also educe violent acts by persons who have a
198 mental illness or who are morally corrupt.

199 (3) The Legislature further recognizes that other types of
200 information, such as crime scene reports, continue to be
201 available which are less intrusive and injurious to the
202 immediate family of the deceased and continue to provide for
203 public oversight. The Legislature further finds that the

2019186e1

204 exemption provided in this act should be given retroactive
205 application because it is remedial in nature.

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

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