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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.—

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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 events that
39 depict either a victim being killed or the body of a victim
40 killed in an incident in which three or more persons, not
41 including the perpetrator, are killed by the perpetrator of an
42 intentional act of violence.

43 2.(2) A photograph or video or audio recording that depicts
44 or records the killing of a law enforcement officer who was
45 acting in accordance with his or her official duties or the
46 killing of a victim of mass violence is confidential and exempt
47 from s. 119.07(1) and s. 24(a), Art. I of the State
48 Constitution, except that a surviving spouse of the decedent may
49 view and copy any such photograph or video recording or listen
50 to or copy any such audio recording. If there is no surviving
51 spouse, ~~then~~ the surviving parents shall have access to such
52 records. If there is no surviving spouse or parent, the ~~then an~~
53 adult children child shall have access to such records. Nothing
54 in this paragraph precludes a surviving spouse, parent, or adult
55 child of the victim from sharing or publicly releasing such
56 photograph or video or audio recording.

57 3.a.(3)(a) The deceased's surviving relative, with whom
58 authority rests to obtain such records, may designate in writing

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59 an agent to obtain such records.

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

69 c.~~(c)~~ The custodian of the record, or his or her designee,
70 may not permit any other person to view or copy such photograph
71 or video recording or listen to or copy such audio recording
72 without a court order.

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

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

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

87 (II)~~2.~~ The seriousness of the intrusion into the family's

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88 right to privacy and whether such disclosure is the least
89 intrusive means available; and

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

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

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

110 6.a.(6)(a) Any custodian of a photograph or video or audio
111 recording that depicts or records the killing of a law
112 enforcement officer who was acting in accordance with his or her
113 official duties or the killing of a victim of mass violence who
114 willfully and knowingly violates this paragraph ~~section~~ commits
115 a felony of the third degree, punishable as provided in s.
116 775.082, s. 775.083, or s. 775.084.

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117 b.~~(b)~~ Any person who willfully and knowingly violates a
118 court order issued pursuant to this paragraph ~~section~~ commits a
119 felony of the third degree, punishable as provided in s.
120 775.082, s. 775.083, or s. 775.084.

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

130 7.~~(7)~~ The This exemption in this paragraph shall be given
131 retroactive application and shall apply to all photographs or
132 video or audio recordings that depict or record the killing of a
133 law enforcement officer who was acting in accordance with his or
134 her official duties or the killing of a victim of mass violence,
135 regardless of whether the killing of the person occurred before,
136 on, or after the effective date of this act July 1, 2011.

137 However, nothing in this paragraph herein is intended to, nor
138 may be construed to, overturn or abrogate or alter any existing
139 orders duly entered into by any court of this state, as of the
140 effective date of this act, which restrict or limit access to
141 any photographs or video or audio recordings that depict or
142 record the killing of a law enforcement officer who was acting
143 in accordance with his or her official duties or the killing of
144 a victim of mass violence.

145 8.~~(8)~~ This paragraph ~~section only~~ applies only to such

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146 photographs and video and audio recordings held by an agency ~~as~~
147 ~~defined in s. 119.011.~~

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

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

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175 dissemination of such photographs and video and audio recordings
176 would subject the immediate family of the deceased to continuous
177 injury.

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

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

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

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