

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           406.136, F.S.; expanding an exemption from public  
 4           records requirements for a photograph or video or  
 5           audio recording held by an agency that depicts or  
 6           records the killing of a law enforcement officer to  
 7           include a photograph or video or audio recording held  
 8           by an agency that depicts or records the killing of a  
 9           victim of a school shooting or the killing of a victim  
 10          of a mass shooting; providing for future legislative  
 11          review and repeal of the exemption; providing a  
 12          statement of public necessity; providing an effective  
 13          date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1.   Section 406.136, Florida Statutes, is amended  
 18          to read:

19           406.136   A photograph or video or audio recording that  
 20          depicts or records the killing of a law enforcement officer who  
 21          was acting in accordance with his or her official duties, the  
 22          killing of a victim of a school shooting, or the killing of a  
 23          victim of a mass shooting.—

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

25           (a)   "Killing of a law enforcement officer who was acting

26 | in accordance with his or her official duties" means all acts or  
27 | events that cause or otherwise relate to the death of a law  
28 | enforcement officer who was acting in accordance with his or her  
29 | official duties, including any related acts or events  
30 | immediately preceding or subsequent to the acts or events that  
31 | were the proximate cause of death.

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

38 | (c) "Killing of a victim of a school shooting" means all  
39 | acts or events that cause or otherwise relate to the death of a  
40 | person, not including the perpetrator, who is killed in an  
41 | incident at a school by an intentional act of gun violence by  
42 | another person, including any related acts or events immediately  
43 | preceding or subsequent to the acts or events that were the  
44 | proximate cause of death.

45 | (2) A photograph or video or audio recording that depicts  
46 | or records the killing of a law enforcement officer who was  
47 | acting in accordance with his or her official duties, the  
48 | killing of a victim of a school shooting, or the killing of a  
49 | victim of a mass shooting is confidential and exempt from s.  
50 | 119.07(1) and s. 24(a), Art. I of the State Constitution, except

51 that a surviving spouse of the decedent may view and copy any  
52 such photograph or video recording or listen to or copy any such  
53 audio recording. If there is no surviving spouse, ~~then~~ the  
54 surviving parents shall have access to such records. If there is  
55 no surviving spouse or parent, the ~~then an~~ adult children ~~child~~  
56 shall have access to such records.

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

60 (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, the killing of a  
66 victim of a school shooting, or the killing of a victim of a  
67 mass shooting, and, unless otherwise required in the performance  
68 of its ~~their~~ duties, the identity of the deceased shall remain  
69 confidential and exempt.

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

74 (4) (a) The court, upon a showing of good cause, may issue  
75 an order authorizing any person to view or copy a photograph or

76 | video recording that depicts or records the killing of a law  
77 | enforcement officer who was acting in accordance with his or her  
78 | official duties, the killing of a victim of a school shooting,  
79 | or the killing of a victim of a mass shooting, or to listen to  
80 | or copy an audio recording that depicts or records the killing  
81 | of a law enforcement officer who was acting in accordance with  
82 | his or her official duties, the killing of a victim of a school  
83 | shooting, or the killing of a victim of a mass shooting, and may  
84 | prescribe any restrictions or stipulations that the court deems  
85 | appropriate.

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

87 | 1. Whether such disclosure is necessary for the public  
88 | evaluation of governmental performance;

89 | 2. The seriousness of the intrusion into the family's  
90 | right to privacy and whether such disclosure is the least  
91 | intrusive means available; and

92 | 3. The availability of similar information in other public  
93 | records, regardless of form.

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

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

113 (6) (a) Any custodian of a photograph or video or audio  
114 recording that depicts or records the killing of a law  
115 enforcement officer who was acting in accordance with his or her  
116 official duties, the killing of a victim of a school shooting,  
117 or the killing of a victim of a mass shooting who willfully and  
118 knowingly violates this section commits a felony of the third  
119 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
120 775.084.

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

125 (c) A criminal or administrative proceeding is exempt from

126 | this section but, unless otherwise exempted, is subject to all  
127 | other provisions of chapter 119;~~7~~ provided, however, that this  
128 | section does not prohibit a court in a criminal or  
129 | administrative proceeding upon good cause shown from restricting  
130 | or otherwise controlling the disclosure of a killing, crime  
131 | scene, or similar photograph or video or audio recording  
132 | ~~recordings~~ in the manner prescribed in this section ~~herein~~.

133 |       (7) The ~~This~~ exemption in this section shall be given  
134 | retroactive application and shall apply to all photographs or  
135 | video or audio recordings that depict or record the killing of a  
136 | law enforcement officer who was acting in accordance with his or  
137 | her official duties, the killing of a victim of a school  
138 | shooting, or the killing of a victim of a mass shooting,  
139 | regardless of whether the killing of the person occurred before,  
140 | on, or after July 1, 2015 ~~2011~~. However, nothing in this section  
141 | ~~herein~~ is intended to, nor may be construed to, overturn or  
142 | abrogate or alter any existing orders duly entered into by any  
143 | court of this state, as of the effective date of this act, which  
144 | restrict or limit access to any photographs or video or audio  
145 | recordings that depict or record the killing of a law  
146 | enforcement officer who was acting in accordance with his or her  
147 | official duties, the killing of a victim of a school shooting,  
148 | or the killing of a victim of a mass shooting.

149 |       (8) This section only applies to such photographs and  
150 | video and audio recordings held by an agency as defined in s.

151 119.011.

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

156 Section 2. (1) The Legislature finds that it is a public  
157 necessity that photographs and video and audio recordings that  
158 depict or record the killing of a victim of a school shooting or  
159 the killing of a victim of a mass shooting be made confidential  
160 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
161 Art. I of the State Constitution. The Legislature finds that  
162 photographs and video and audio recordings that depict or record  
163 the killing of a victim of a school shooting or the killing of a  
164 victim of a mass shooting render a graphic and often disturbing  
165 visual or aural representation of the deceased. Such photographs  
166 and video and audio recordings provide a view of the deceased in  
167 the final moments of life, often bruised, bloodied, broken, or  
168 with bullet wounds or other wounds. As such, photographs and  
169 video and audio recordings that depict or record the killing of  
170 a victim of a school shooting or the killing of a victim of a  
171 mass shooting 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  
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 recordings may cause the immediate family  
185 of the deceased, 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 a school shooting or  
188 the killing of a victim of a mass shooting is harmful to the  
189 public. The Legislature is gravely concerned and saddened by the  
190 horrific mass killings perpetrated at the Pulse nightclub in  
191 Orlando, the Fort Lauderdale-Hollywood International Airport,  
192 and Marjory Stoneman Douglas High School. The Legislature is  
193 concerned that, if these photographs and recordings are  
194 released, terrorists will use them to attract followers, bring  
195 attention to their causes, and inspire others to kill. The  
196 Legislature also finds that dissemination of these photographs  
197 and recordings may also educe violent acts by the mentally ill  
198 or morally corrupt.

199 (3) The Legislature further recognizes that there  
200 continues to be other types of available information, such as

HB 577

2019

201 crime scene reports, which are less intrusive and injurious to  
202 the immediate family of the deceased and which continue to  
203 provide for public oversight. The Legislature further finds that  
204 the exemption provided in this act should be given retroactive  
205 application because it is remedial in nature.

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