

CHAPTER 2011-115

Committee Substitute for House Bill No. 411

An act relating to public records; providing a definition; providing an exemption from public records requirements for photographs and video and audio recordings that depict or record the killing of a person; authorizing access to such photographs or video or audio recordings by specified members of the immediate family of the deceased subject of the photographs or video or audio recordings; providing for access to such records by local governmental entities or state or federal agencies in furtherance of official duties; providing for access pursuant to court order; providing guidelines of the court in issuing an order authorizing such photographs or video or audio recordings to be viewed, copied, or heard; requiring specified notice of a court petition to view or copy such records; providing penalties; exempting criminal or administrative proceedings from the act; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a finding of public necessity; providing an effective date.

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

Section 1. (1) As used in this section, the term “killing of a person” means all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

(2) A photograph or video or audio recording that depicts or records the killing of a person is confidential and exempt from section 119.07(1), Florida Statutes, and Section 24(a), Article I of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records.

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

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a person and, unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt.

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

(4)(a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a person or to listen to or copy an audio recording that depicts or records the killing of a person and may prescribe any restrictions or stipulations that the court deems appropriate.

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

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

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

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

(c) In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording that depicts or records the killing of a person must be under the direct supervision of the custodian of the record or his or her designee.

(5) A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a person or to listen to or copy any such audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased.

(6)(a) Any custodian of a photograph or video or audio recording that depicts or records the killing of a person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in section 775.082, section 775.083, or section 775.084, Florida Statutes.

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

(c) A criminal or administrative proceeding is exempt from this section but, unless otherwise exempted, is subject to all other provisions of chapter 119, Florida Statutes, provided however that this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recordings in the manner prescribed herein.

(7) This exemption shall be given retroactive application and shall apply to all photographs or video or audio recordings that depict or record the killing of a person, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, nothing herein is intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a person.

(8) This section only applies to such photographs and video and audio recordings held by an agency as defined in section 119.011, Florida Statutes.

(9) This section is subject to the Open Government Sunset Review Act in accordance with section 119.15, Florida Statutes, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that is a public necessity that photographs and video and audio recordings that depict or record the killing of any person be made confidential and exempt from the requirements of section 119.07(1), Florida Statutes, and Section 24(a) of Article I of the State Constitution. The Legislature finds that photographs or video or audio recordings that depict or record the killing of any person render a visual or aural representation of the deceased in graphic and often disturbing fashion. Such photographs or video or audio recordings provide a view of the deceased in the final moments of life, often bruised, bloodied, broken, with bullet wounds or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings that depict or record the killing of any person are highly sensitive representations of the deceased which, if heard, viewed, copied or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased. The Legislature recognizes that the existence of the World Wide Web and the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of such photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury. The Legislature further recognizes that there continue to be other types of available information, such as crime scene reports, which are less intrusive and injurious to the immediate family members of the deceased and which continue to provide for public oversight. The Legislature further finds that the exemption provided in this act should be given retroactive application, except as otherwise provided, because it is remedial in nature.

Section 3. This act shall take effect July 1, 2011.

Approved by the Governor June 2, 2011.

Filed in Office Secretary of State June 2, 2011.