

CHAPTER 2019-46

Senate Bill No. 186

An act relating to public records; transferring, renumbering, and amending s. 406.136, F.S.; defining the term “killing of a victim of mass violence”; expanding an existing exemption from public records requirements for a photograph or a video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or a video or audio recording held by an agency which depicts or records the killing of a victim of mass violence; clarifying that a surviving spouse, parent, or adult child of the victim is not precluded from publicly releasing such photograph or video or audio recording; providing criminal penalties; providing retroactive applicability; providing for future legislative review and repeal of the exemption; conforming provisions to changes made by the act; providing a statement of public necessity; providing a directive to the Division of Law Revision; providing an effective date.

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

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

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

(2) AGENCY INVESTIGATIONS.—

(p)1.(4) As used in this paragraph ~~section~~, the term:

a. “Killing of a law enforcement officer who was acting in accordance with his or her official duties” means all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

b. “Killing of a victim of mass violence” means events that depict either a victim being killed or the body of a victim killed in an incident in which three or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence.

2.(2) A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1) and s. 24(a), Art. 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, ~~the then an adult children child~~ shall have access to such records. Nothing in this paragraph precludes a surviving spouse, parent, or adult child of the victim from sharing or publicly releasing such photograph or video or audio recording.

~~3.a.(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.(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 law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, and, unless otherwise required in the performance of ~~its~~ their duties, the identity of the deceased shall remain confidential and exempt.

~~c.(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.(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 law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, or to listen to or copy an audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, and may prescribe any restrictions or stipulations that the court deems appropriate.

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

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

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

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

~~c.(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 law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence must be under the direct supervision of the custodian of the record or his or her designee.

~~5.(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 law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass

violence, 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 surviving living parent, ~~then~~ to the adult children of the deceased.

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

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

~~c.(c)~~ A criminal or administrative proceeding is exempt from this paragraph section but, unless otherwise exempted, is subject to all other provisions of chapter 119; ~~provided however, that this paragraph 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 recording recordings in the manner prescribed in this paragraph herein.

~~7.(7)~~ The This exemption in this paragraph shall be given retroactive application and shall apply to all photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, regardless of whether the killing of the person occurred before, on, or after the effective date of this act July 1, 2011. However, nothing in this paragraph 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 law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence.

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

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

Section 2. (1) The Legislature finds that it is a public necessity that photographs and video and audio recordings that depict or record the killing of a victim of mass violence be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

The Legislature finds that photographs and video and audio recordings that depict or record the killing of a victim of mass violence render a graphic and often disturbing visual or aural representation of the deceased. Such photographs and video and audio recordings provide a view of the deceased in the final moments of life, in which they are often bruised, bloodied, broken, baring bullet wounds or other wounds, lacerated, dismembered, or decapitated. As such, photographs and video and audio recordings that depict or record the killing of a victim of mass violence 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 and detract from the memory of the deceased. The Legislature recognizes that the existence of the Internet and the proliferation of personal computers and cellular telephones 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 such photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury.

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

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

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

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

Approved by the Governor May 23, 2019.

Filed in Office Secretary of State May 23, 2019.