

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB APC 18-08 (2018)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Appropriations Committee
2 Representative Brown offered the following:

3
4 **Amendment (with title amendment)**

5 Between lines 78 and 79, insert:

6 Section 4. Section 406.136, Florida Statutes, is amended
7 to read:

8 406.136 A photograph or video or audio recording that
9 depicts or records the killing of a person ~~law enforcement~~
10 ~~officer who was acting in accordance with his or her official~~
11 ~~duties.~~-

12 (1) As used in this section, the term "killing of a
13 person" ~~"killing of a law enforcement officer who was acting in~~
14 ~~accordance with his or her official duties"~~ means all acts or
15 events that cause or otherwise relate to the death of any human
16 being ~~a law enforcement officer who was acting in accordance~~

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17 ~~with his or her official duties~~, including any related acts or
18 events immediately preceding or subsequent to the acts or events
19 that were the proximate cause of death. The term does not
20 include the killing of a person in the care and custody of a
21 state agency. For purposes of this subsection, the term "care
22 and custody of a state agency" includes, but is not limited to,
23 a child abuse protective investigation, protective supervision,
24 foster care and related services, a protective investigation or
25 protective supervision of a vulnerable adult, or correctional
26 supervision, as defined in chapter 39, chapter 409, chapter 415,
27 or chapter 945.

28 (2) A photograph or video or audio recording that depicts
29 or records the killing of a person ~~law enforcement officer who~~
30 ~~was acting in accordance with his or her official duties~~ is
31 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
32 of the State Constitution, except that a surviving spouse of the
33 decedent may view and copy any such photograph or video
34 recording or listen to or copy any such audio recording. If
35 there is no surviving spouse, ~~then~~ the surviving parents shall
36 have access to such records. If there is no surviving spouse or
37 parent, ~~the then an~~ adult children ~~child~~ shall have access to
38 such records.

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

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42 (b) A local governmental entity, or a state or federal
43 agency, in furtherance of its official duties, pursuant to a
44 written request, may view or copy a photograph or video
45 recording or may listen to or copy an audio recording of the
46 killing of a person ~~law enforcement officer who was acting in~~
47 ~~accordance with his or her official duties~~ and, unless otherwise
48 required in the performance of its ~~their~~ duties, the identity of
49 the deceased shall remain confidential and exempt.

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

54 (4) (a) The court, upon a showing of good cause, may issue
55 an order authorizing any person to view or copy a photograph or
56 video recording that depicts or records the killing of a person
57 ~~law enforcement officer who was acting in accordance with his or~~
58 ~~her official duties~~ or to listen to or copy an audio recording
59 that depicts or records the killing of a person ~~law enforcement~~
60 ~~officer who was acting in accordance with his or her official~~
61 ~~duties~~ and may prescribe any restrictions or stipulations that
62 the court deems appropriate.

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

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

66 2. The seriousness of the intrusion into the family's

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67 right to privacy and whether such disclosure is the least
68 intrusive means available; and

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

71 (c) In all cases, the viewing, copying, listening to, or
72 other handling of a photograph or video or audio recording that
73 depicts or records the killing of a person ~~law enforcement~~
74 ~~officer who was acting in accordance with his or her official~~
75 ~~duties~~ must be under the direct supervision of the custodian of
76 the record or his or her designee.

77 (5) A surviving spouse shall be given reasonable notice of
78 a petition filed with the court to view or copy a photograph or
79 video recording that depicts or records the killing of a person
80 ~~law enforcement officer who was acting in accordance with his or~~
81 ~~her official duties~~ or to listen to or copy any such audio
82 recording, a copy of such petition, and reasonable notice of the
83 opportunity to be present and heard at any hearing on the
84 matter. If there is no surviving spouse, ~~then~~ such notice must
85 be given to the parents of the deceased and, if the deceased has
86 no surviving ~~living~~ parent, ~~then~~ to the adult children of the
87 deceased.

88 (6) (a) Any custodian of a photograph or video or audio
89 recording that depicts or records the killing of a person ~~law~~
90 ~~enforcement officer who was acting in accordance with his or her~~
91 ~~official duties~~ who willfully and knowingly violates this

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92 section commits a felony of the third degree, punishable as
93 provided in s. 775.082, s. 775.083, or s. 775.084.

94 (b) Any person who willfully and knowingly violates a
95 court order issued pursuant to this section commits a felony of
96 the third degree, punishable as provided in s. 775.082, s.
97 775.083, or s. 775.084.

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

106 (7) The ~~This~~ exemption in this section shall be given
107 retroactive application and shall apply to all photographs or
108 video or audio recordings that depict or record the killing of a
109 person law enforcement officer who was acting in accordance with
110 ~~his or her official duties~~, regardless of whether the killing of
111 the person occurred before, on, or after July 1, 2015 ~~2011~~.
112 However, nothing in this section herein is intended to, nor may
113 be construed to, overturn or abrogate or alter any existing
114 orders duly entered into by any court of this state, as of the
115 effective date of this act, which restrict or limit access to
116 any photographs or video or audio recordings that depict or

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117 record the killing of a person ~~law enforcement officer who was~~
118 ~~acting in accordance with his or her official duties.~~

119 (8) This section only applies to such photographs and
120 video and audio recordings held by an agency as defined in s.
121 119.011.

122 (9) This section is subject to the Open Government Sunset
123 Review Act in accordance with s. 119.15 and shall stand repealed
124 on October 2, 2023, unless reviewed and saved from repeal
125 through reenactment by the Legislature.

126 Section 5. (1) The Legislature finds that it is a public
127 necessity that photographs and video and audio recordings that
128 depict or record the killing of a person be made confidential
129 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
130 Art. I of the State Constitution. The Legislature finds that
131 photographs and video and audio recordings that depict or record
132 the killing of a person render a graphic and often disturbing
133 visual or aural representation of the deceased. Such photographs
134 and video and audio recordings provide a view of the deceased in
135 the final moments of life, often bruised, bloodied, broken, with
136 bullet wounds or other wounds, cut open, dismembered, or
137 decapitated. As such, photographs and video and audio recordings
138 that depict or record the killing of a person are highly
139 sensitive representations of the deceased which, if heard,
140 viewed, copied, or publicized, could result in trauma, sorrow,
141 humiliation, or emotional injury to the immediate family of the

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142 deceased and detract from the memory of the deceased. The
143 Legislature recognizes that the existence of the Internet and
144 the proliferation of personal computers and cellular telephones
145 throughout the world encourages and promotes the wide
146 dissemination of such photographs and video and audio recordings
147 24 hours a day and that widespread unauthorized dissemination of
148 such photographs and video and audio recordings would subject
149 the immediate family of the deceased to continuous injury.

150 (2) In addition to the emotional and mental injury that
151 these photographs and recordings may cause family members, the
152 Legislature is also concerned that dissemination of photographs
153 and video and audio recordings that depict or record the killing
154 of a person is harmful to the public. The Legislature is gravely
155 concerned and saddened by the horrific mass killings perpetrated
156 at the Pulse nightclub in Orlando and the Fort Lauderdale-
157 Hollywood International Airport. The Legislature is concerned
158 that, if these photographs and recordings are released,
159 terrorists will use them to attract followers, bring attention
160 to their causes, and inspire others to kill. The Legislature
161 also finds that dissemination of these photographs and
162 recordings may also educe violent acts by the mentally ill or
163 morally corrupt.

164 (3) The Legislature further recognizes that there
165 continues to be other types of available information, such as
166 crime scene reports, which are less intrusive and injurious to

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167 the immediate family of the deceased and which continue to
168 provide for public oversight. The Legislature further finds that
169 the exemption provided in this act should be given retroactive
170 application because it is remedial in nature.

171

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173 **T I T L E A M E N D M E N T**

174 Remove line 10 and insert:

175 information; amending s. 406.136, F.S.; expanding an exemption
176 from public records requirements for a photograph or video or
177 audio recording held by an agency that depicts or records the
178 killing of a law enforcement officer to include a photograph or
179 video or audio recording held by an agency that depicts or
180 records the killing of a person; providing for future
181 legislative review and repeal of the exemptions; providing
182 statements of public necessity;