

By Senator Dean

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1 A bill to be entitled
2 An act relating to public records; creating s.
3 925.131, F.S.; providing definitions; providing an
4 exemption from the public-records law for
5 investigative or crime scene photographs or video
6 recordings of a deceased person, a part of a deceased
7 person, or any part of a person's extreme, severe, or
8 acute injuries held by a law enforcement agency;
9 providing exceptions for certain relatives, injured
10 persons, or their designees; permitting a local or
11 county governmental entity, or a state or federal
12 agency, in furtherance of its official duties, to
13 access such records pursuant to a written request to
14 the law enforcement agency in possession of such
15 records; permitting a court, upon a showing of good
16 cause, to authorize any person to view or copy such a
17 record and impose any restrictions or stipulations
18 that it deems appropriate; requiring notice of such a
19 proceeding, a copy of the petition, and notice of the
20 opportunity to be present and heard at any hearing to
21 be provided to an injured person or to specified
22 relatives of a deceased person; requiring that the
23 viewing, copying, or other handling of such a record
24 be under the direct supervision of the custodian of
25 the record or his or her designee; providing criminal
26 penalties for violations of statute or court order;
27 exempting specified proceedings; permitting a judge or
28 other presiding officer in a criminal, civil, or
29 administrative proceeding upon good cause shown to

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30 restrict or otherwise control the disclosure of such a
31 record; providing for future legislative review and
32 repeal; providing a finding of public necessity;
33 providing for retroactive effect; providing a
34 contingent effective date.

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

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38 Section 1. Section 925.131, Florida Statutes, is created to
39 read:

40 925.131 Public-records exemption for certain law
41 enforcement photographs or video recordings.-

42 (1) For purposes of this section, the term:

43 (a) "Law enforcement agency" means any state agency or unit
44 of government in this state that has authority to employ or
45 appoint law enforcement officers, as defined in s. 943.10, as
46 well as any employee, deputy, or agent of such an agency or any
47 other person who may obtain possession of a restricted
48 photograph or recording in the course of assisting such an
49 agency in the performance of its duties.

50 (b) "Restricted photograph or recording" means an
51 investigative or crime scene photograph or video recording of a
52 deceased person, a part of a deceased person, or any part of a
53 person's extreme, severe, or acute injuries.

54 (2) (a) A restricted photograph or recording held by a law
55 enforcement agency is confidential and exempt from s. 119.07(1)
56 and s. 24(a), Art. I of the State Constitution, except that:

57 1. A restricted photograph or recording of a deceased
58 person may be viewed and copied by the surviving spouse of that

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59 person, by a surviving parent of that person if there is no
60 surviving spouse, or by an adult child of the person if there is
61 no surviving spouse or parent.

62 2. A person whose extreme, severe, or acute injury is
63 depicted in whole or in part in a restricted photograph or
64 recording may view and copy such restricted photograph or
65 recording.

66 (b) Any person authorized to obtain records under this
67 subsection may designate in writing an agent to obtain such
68 records on his or her behalf.

69 (c) Persons authorized under this subsection to obtain such
70 records shall be provided access thereto unless such records are
71 otherwise exempt from s. 119.07(1) and s. 24(a), Art. I of the
72 State Constitution.

73 (3) A local or county governmental entity, or a state or
74 federal agency, in furtherance of its official duties and
75 pursuant to a written request to the law enforcement agency in
76 possession of such records, may view or copy a restricted
77 photograph or recording; however, unless otherwise required in
78 the performance of the entity's or agency's duties, the identity
79 of the deceased or injured person shall retain its confidential
80 and exempt status.

81 (4) Any viewing, copying, or other handling of a restricted
82 photograph or recording must be under the direct supervision of
83 the custodian of the record or his or her designee. The
84 custodian or his or her designee may not permit any person,
85 other than a person so authorized under subsection (2) or
86 subsection (3), to view or copy a restricted photograph or
87 recording unless required to do so by court order under

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88 subsection (5).

89 (5) (a) A court, upon a showing of good cause, may issue an
90 order as provided in this subsection authorizing any person to
91 view or copy a restricted photograph or recording and may
92 prescribe any restrictions or stipulations that the court deems
93 appropriate.

94 (b) In determining good cause for purposes of paragraph
95 (a), the court shall consider whether such disclosure is
96 necessary for the public evaluation of governmental performance,
97 the seriousness of the intrusion into the family's or injured
98 person's right to privacy, whether such disclosure is the least
99 intrusive means available to enable public evaluation of
100 governmental performance, and the availability of similar
101 information in other public records, regardless of form.

102 (c) A surviving spouse of a deceased person or an injured
103 person appearing in a restricted photograph or recording shall
104 be given reasonable notice of a petition filed with the court
105 under this subsection to view or copy the restricted photograph
106 or recording, a copy of such petition, and reasonable notice of
107 the opportunity to be present and heard at any hearing on the
108 matter. If there is no surviving spouse, then such notice must
109 be given to the parents of the deceased, and if the deceased has
110 no living parent, then to the adult children of the deceased.

111 (6) (a) Any custodian or a designee of a custodian of a
112 restricted photograph or recording who willfully and knowingly
113 violates a provision of this section commits a felony of the
114 third degree, punishable as provided in s. 775.082, s. 775.083,
115 or s. 775.084.

116 (b) Any person who willfully and knowingly violates a court

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117 order issued pursuant to this section commits a felony of the
118 third degree, punishable as provided in s. 775.082, s. 775.083,
119 or s. 775.084.

120 (7) A criminal, civil, or administrative proceeding is
121 exempt from the application of this section as to any
122 photographs or recordings, but unless such photographs or
123 recordings are otherwise exempt from s. 119.07(1) and s. 24(a),
124 Art. I of the State Constitution, the photographs or recordings
125 are subject to all other provisions of chapter 119. However,
126 this section does not prohibit a judge or other presiding
127 officer in a criminal, civil, or administrative proceeding, upon
128 good cause shown, from restricting or otherwise controlling the
129 disclosure of a restricted photograph or recording, or a similar
130 photograph or recording, in the manner prescribed in this
131 section.

132 (8) This section is subject to the Open Government Sunset
133 Review Act in accordance with s. 119.15, and shall stand
134 repealed on October 2, 2014, unless reviewed and saved from
135 repeal through reenactment by the Legislature.

136 Section 2. The Legislature finds that it is a public
137 necessity that investigative or crime scene photographs or video
138 recordings of a deceased person, a part of a deceased person, or
139 any part of a person's extreme, severe, or acute injuries be
140 confidential and exempt from disclosure. The Legislature finds
141 that such photographs or video recordings may depict or describe
142 a deceased or suffering person in graphic and disturbing
143 fashion. Such photographs or video recordings, if viewed,
144 copied, or publicized, could result in trauma, sorrow,
145 humiliation, or emotional injury to the individual depicted or

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146 his or her immediate family. If the individual is deceased, such
147 dissemination could also cause injury to the memory of the
148 deceased. The Legislature notes that the existence of the
149 Internet and the proliferation of personal computers throughout
150 the world encourages and promotes the wide dissemination of
151 photographs and video recordings 24 hours a day and that
152 widespread unauthorized dissemination of photographs and video
153 recordings would subject a suffering individual and the
154 immediate family of a deceased or suffering individual to
155 continuous injury. The Legislature further notes that there
156 continue to be other types of available information, such as
157 police reports, that are less intrusive and injurious and that
158 continue to provide for public oversight. The Legislature
159 further finds that the exemption provided in this act should be
160 given retroactive application because it is remedial in nature.

161 Section 3. This act shall apply to all photographs or video
162 recordings subject to its terms regardless of whether they were
163 created before, on, or after the effective date of this act.

164 Section 4. This act shall take effect on the same date that
165 SB ____ or similar legislation takes effect, if such legislation
166 is enacted in the same legislative session or an extension
167 thereof and becomes law.