

By Senator Oelrich

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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, images, or
6 video recordings of a deceased person, a part of a
7 deceased person, or any part of a person's extreme,
8 severe, or acute injuries held by a law enforcement
9 agency; providing exceptions for certain relatives,
10 injured persons, or their designees; permitting a
11 local or county governmental entity, or a state or
12 federal agency, in furtherance of its official duties,
13 to access such records pursuant to a written request
14 to the law enforcement agency in possession of such
15 records, although the confidential and exempt status
16 of such records shall be maintained; permitting any
17 person to view, but not copy, photograph, or remove,
18 any record not otherwise confidential or exempt from
19 public records provisions under the direct supervision
20 of the custodian of the record or his or her designee;
21 requiring that the viewing, copying, or other handling
22 of such a record be under the direct supervision of
23 the custodian of the record or his or her designee;
24 permitting a court or law enforcement agency head,
25 upon a showing of good cause, to authorize any person
26 to view or copy such a record and impose any
27 restrictions or stipulations that it deems
28 appropriate; providing criminal penalties for
29 violations of statute or court order; providing for

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30 future legislative review and repeal; providing a
31 finding of public necessity; providing for retroactive
32 effect; providing a contingent effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

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36 Section 1. Section 925.131, Florida Statutes, is created to
37 read:

38 925.131 Public-records exemption for certain law
39 enforcement photographs, images, or video recordings.-

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

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

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

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

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

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59 adult child of the person.

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

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

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

71 (3) A local or county governmental entity, or a state or
72 federal agency, in furtherance of its official duties and
73 pursuant to a written request to the law enforcement agency in
74 possession of such records, may view or copy a restricted
75 photograph, image, or recording; however, the receiving entity
76 or agency shall maintain the confidential and exempt status of
77 the restricted photograph, image, or recording and shall protect
78 the identity of the deceased or injured person.

79 (4) Any person may view, but not copy, photograph, or
80 remove, any restricted photograph, image, or recording not
81 otherwise confidential or exempt from s. 119.07(1) and s. 24(a),
82 Art. I of the State Constitution, under the direct supervision
83 of the custodian of the record or his or her designee.

84 (5) Any viewing, copying, or other handling of a restricted
85 photograph, image, or recording must be under the direct
86 supervision of the custodian of the record or his or her
87 designee.

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88 (6) (a) The following are exceptions to the restrictions in
89 subsection (4) on copying photographs, images, or video
90 recordings of a deceased person, a part of a deceased person, or
91 any part of a person's extreme, severe, or acute injuries being
92 held confidential:

93 1. When the head of the law enforcement agency in this
94 state in possession of the photographs, images, or video
95 recordings has personally examined the photographs, images, or
96 video recordings and has determined in his or her discretion
97 that there is good cause for their release, they shall be
98 disseminated in accordance with his or her written instructions.
99 These instructions must name the party or parties that are
100 authorized to obtain the photographs, images, or video
101 recordings or a copy of them.

102 2. When a judge in a county or circuit in this state has
103 personally examined the photographs, images, or video recordings
104 and has determined in his or her judicial opinion that there is
105 good cause for their release, they shall be disseminated in
106 accordance with his or her written court order. The order must
107 name the party or parties that are authorized to obtain the
108 photographs, images, or video recordings or a copy of them.

109 (b) In determining good cause for purposes of paragraph
110 (a), the agency head or court shall consider whether such
111 disclosure is necessary for the public evaluation of
112 governmental performance, the seriousness of the intrusion into
113 the family's or injured person's right to privacy, whether such
114 disclosure is the least intrusive means available to enable
115 public evaluation of governmental performance, and the
116 availability of similar information in other public records,

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117 regardless of form.

118 (7) (a) It is unlawful for:

119 1. Any custodian or a designee of a custodian of a
120 restricted photograph, image, or recording to willfully and
121 knowingly violate a provision of this section; or

122 2. Any person to willfully and knowingly violate a court
123 order or agency head's instructions issued pursuant to this
124 section.

125 (b) Any person who violates paragraph (a) commits:

126 1. For the first violation, a misdemeanor of the first
127 degree, punishable as provided in s. 775.082 or s. 775.083.

128 2. For a second or subsequent violation, a felony of the
129 third degree, punishable as provided in s. 775.082, s. 775.083,
130 or s. 775.084.

131 (8) This section is subject to the Open Government Sunset
132 Review Act in accordance with s. 119.15 and shall stand repealed
133 on October 2, 2015, unless reviewed and saved from repeal
134 through reenactment by the Legislature.

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

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

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

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