

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: H2/3/17

A Bill

HOUSE BILL 1236

5 By: Representatives Gazaway, Tosh
6 By: Senator B. Johnson
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For An Act To Be Entitled

9 AN ACT TO PROTECT THE PRIVACY OF SURVIVING FAMILY
10 MEMBERS OF A LAW ENFORCEMENT OFFICER WHO DIES IN THE
11 LINE OF DUTY; TO EXEMPT CERTAIN LAW ENFORCEMENT
12 RECORDS FROM DISCLOSURE UNDER THE FREEDOM OF
13 INFORMATION ACT OF 1967; TO DECLARE AN EMERGENCY; AND
14 FOR OTHER PURPOSES.
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Subtitle

18 TO PROTECT THE PRIVACY OF SURVIVING
19 FAMILY MEMBERS OF A LAW ENFORCEMENT
20 OFFICER WHO DIES IN THE LINE OF DUTY; AND
21 TO EXEMPT CERTAIN LAW ENFORCEMENT RECORDS
22 FROM DISCLOSURE; AND TO DECLARE AN
23 EMERGENCY.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. DO NOT CODIFY. Legislative findings and determinations.

29 The General Assembly finds and determines that:

30 (1) The nature of a profession in law enforcement is inherently
31 dangerous, with law enforcement officers frequently facing life threatening
32 situations;

33 (2) During the course of his or her duties, a law enforcement
34 officer routinely relies on audio and video recording devices to record his
35 or her movements and actions;

36 (3) Due to the inherently dangerous nature of a profession in



1 law enforcement, a law enforcement officer's death that occurs in the line of
2 duty is likely to be captured and depicted on an audio or video recording
3 device;

4 (4) Absent a compelling public interest, or the necessity to
5 evaluate a law enforcement officer's conduct, or an official purpose such as
6 a criminal, civil, or administrative proceeding or an official investigation
7 into a law enforcement officer's death, the disclosure of an audio or visual
8 depiction of the death of a law enforcement officer would have little value
9 to the public other than to satisfy a morbid curiosity concerning the death
10 of a law enforcement officer;

11 (5) Presently, there are audio and video recordings that depict
12 the death of a law enforcement officer available in various public forums for
13 viewing and sharing which have the potential to encourage copycat acts of
14 violence against law enforcement officers and to incite other acts of
15 violence against law enforcement officers, and which also subject the
16 surviving family members of the deceased law enforcement officer to viewing
17 the murder or death of their family member on television, internet, social
18 media, and other publically accessible forums - causing the surviving family
19 members to relive the pain associated with the death and allowing the public
20 to view and publically share with others sensitive depictions of the final
21 moments and death of their family member - thereby invading the privacy of
22 the deceased law enforcement officer's family; and

23 (6) It is the intent of this act to:

24 (A) Protect the privacy belonging to family members of a
25 deceased law enforcement officer; and

26 ((B) Discourage copycat acts of violence or other similar
27 forms of violence against law enforcement officers.

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29 SECTION 2. Arkansas Code Title 12, Chapter 6, is amended to add an
30 additional subchapter to read as follows:

31 Subchapter 6 – Law Enforcement Agencies in General

32
33 12-6-601. Confidentiality of certain law enforcement records –
34 Definitions.

35 (a) As used in this section:

36 (1) "Access a record" means to view a photograph or video

1 recording or to listen to an audio recording;

2 (2) "Custodian of the record" means a person identified by the
3 governmental entity that possesses the record and is responsible for
4 safeguarding and providing access to the record;

5 (3) "Death of a law enforcement officer" means all acts or
6 events that caused or otherwise relate to the death of a law enforcement
7 officer who was acting in the course of his or her official duties, including
8 any related acts or events immediately preceding or subsequent to the acts or
9 events that caused or otherwise relate to the death;

10 (4) "Family member" means a spouse, biological or adopted child,
11 parent, or sibling of the deceased law enforcement officer;

12 (5) "Law enforcement officer" means a person vested by law with
13 a duty to maintain public order and to make arrests for offenses;

14 (6)(A) "Notice" means that from all the facts and circumstances
15 known to the person at the time, the person has reason to know that the facts
16 and circumstances exist.

17 (B) Notice may be communicated in person or through other
18 means, including without limitation, by telephone, telegraph, teletype,
19 telecopier, facsimile, or other form of wire or wireless communication, or by
20 mail or private carrier; and

21 (7) "Record" means a photograph, video recording, or audio
22 recording, including any audio or video footage captured on a body-worn
23 camera or a dashboard camera.

24 (b)(1) A record that depicts or records the death of a law enforcement
25 officer is confidential and exempt from disclosure under the Freedom of
26 Information Act of 1967, § 25-19-101 et seq.

27 (2)(A) However, a family member of the deceased law enforcement
28 officer may access a record described in subdivision (b)(1) of this section.

29 (B) A minor child of a deceased law enforcement officer
30 who is at least fourteen (14) years of age may access a record described in
31 subdivision (b)(1) of this section if the parent or guardian of the child:

32 (i) Provides written consent to the custodian of the
33 record to permit the child to access a record; and

34 (ii) Is present to provide supervision over the
35 child as he or she accesses a record.

36 (c)(1) The custodian of a record shall not permit a person not

1 authorized under this section to copy, disseminate, reproduce, transmit, or
2 access a record described in subdivision (b)(1) of this section.

3 (2) The access to a record described in subdivision (b)(1) of
4 this section or other handling of a record described in subdivision (b)(1) of
5 this section shall be under the direct supervision of the custodian of the
6 record.

7 (3) A person or persons designated as the custodian of a record
8 who knowingly violates this section upon conviction is guilty of a Class D
9 felony.

10 (d)(1)(A) A person or entity may petition a circuit court in the
11 county where a record described in subdivision (b)(1) of this section is
12 physically located in order to obtain access to the record.

13 (B) At a hearing held on a petition filed with the circuit
14 court under subdivision (d)(1)(A) of this section seeking access to a record
15 described in subdivision (b)(1), any review of a record described in
16 subdivision (b)(1) shall be conducted in camera.

17 (2) Upon a showing of good cause, a circuit court may issue an
18 order authorizing a person or entity under subdivision (d)(1) of this section
19 to access a record described in subdivision (b)(1) of this section and may
20 prescribe restrictions or stipulations pertaining to the access of the record
21 that the court deems appropriate, including whether to allow for the copying
22 or public disclosure of a record described in subdivision (b)(1) of this
23 section.

24 (3) In determining good cause under subdivision (d)(2) of this
25 section, the circuit court shall consider the following factors, along with
26 other factors that the court may deem relevant:

27 (A) Whether access to the record described in subdivision
28 (b)(1) of this section is necessary for the public evaluation of a law
29 enforcement officer's conduct during the performance of his or her official
30 duties;

31 (B) Whether there is a compelling public interest in the
32 disclosure of the record;

33 (C) The seriousness of the intrusion into the privacy of
34 the deceased law enforcement officer's family members; and

35 (D) The availability of similar information in other
36 forms.

1 (4)(A) A custodian of a record described in subdivision (b)(1)
2 of this section shall be given notice of:

3 (i) A petition filed with a circuit court to access
4 a record described in subdivision (b)(1) of this section; and

5 (ii) The opportunity to be present and heard at any
6 hearing on the matter.

7 (B) In addition to custodian notification under
8 subdivision (d)(4)(A) of this section, the following people shall be provided
9 notice described in subdivisions (d)(4)(A)(i) and (d)(4)(A)(ii) of this
10 section:

11 (i) The surviving spouse of the deceased law
12 enforcement officer, if any;

13 (ii) If the deceased law enforcement officer has no
14 surviving spouse, the parents of the deceased law enforcement officer, if
15 any; or

16 (iii) If the deceased law enforcement officer has no
17 surviving parents and no surviving spouse, the adult children of the deceased
18 officer law enforcement officer.

19 (e) This section does not:

20 (1) Prohibit a judge, jury, attorney, court personnel, or other
21 persons necessary to a criminal, civil, or administrative proceeding
22 involving the death of a law enforcement officer from viewing a record
23 described in subdivision (b)(1) of this section;

24 (2) Overturn, abrogate, or alter a court order that exists on
25 the effective date of this act that restricts , limits, or grants access to a
26 record described in subdivision (b)(1) of this section;

27 (3)(A)(i) Prohibit a law enforcement agency involved in an
28 official investigation of a death of a law enforcement officer, including
29 without limitation, the law enforcement agency by whom the deceased law
30 enforcement officer was employed at the time of his or her death, the
31 Department of Arkansas State Police, and the Federal Bureau of Investigation,
32 from obtaining a record described in subdivision (b)(1) of this section for
33 the purpose of conducting an official investigation pertaining to the death
34 of a law enforcement officer.

35 (ii) However, a record used during an official
36 investigation under subdivision (e)(3)(A)(i) of this section shall not be

1 reproduced, transmitted, or disseminated for any purpose not authorized under
2 this section.

3 (B)(i) This section does not prohibit the law enforcement agency
4 by whom the deceased law enforcement officer was employed from using a record
5 described in subdivision (b)(1) of this section for law enforcement officer
6 training or internal review.

7 (ii) However, a record used for the purpose of law
8 enforcement officer training or internal review under subdivision
9 (e)(3)(B)(i) of this section shall not be reproduced, transmitted, or
10 disseminated for any purpose not authorized under this section.

11 (C)(i) This section does not prohibit the use of a record
12 described in subdivision (b)(1) of this section for law enforcement officer
13 training conducted by an entity authorized to conduct law enforcement
14 training, including without limitation:

15 (a) The Law Enforcement Training Academy;

16 (b) The Criminal Justice Institute;

17 (c) The Arkansas Law Enforcement Training
18 Academy; or

19 (d) Other law enforcement officer training
20 programs.

21 (ii) However, a record used for law enforcement
22 officer training purposes under subdivision (e)(3)(C)(i) of this section
23 shall not be reproduced, transmitted, or disseminated for any purpose not
24 authorized under this section; or

25 (4)(A) Prohibit a prosecuting attorney, deputy prosecuting
26 attorney, defense counsel pursuant to a motion of discovery, their staff, or
27 attorneys involved in civil litigation involving the death of a law
28 enforcement officer from accessing or copying a record described in
29 subdivision (b)(1) of this section.

30 (B) A record accessed or copied under subdivision
31 (e)(4)(A) of this section shall not be reproduced, transmitted, or
32 disseminated for any purpose not authorized under this section.

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34 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
35 General Assembly of the State of Arkansas that it is of public interest to
36 protect the privacy of the family members of a deceased law enforcement

1 officer; that currently, there are no safeguards or procedures in place to
2 ensure that a recording that depicts the death of a law enforcement officer
3 is released in a proper, respectful, and authorized manner; and that this act
4 is immediately necessary because it provides a balanced procedure to achieve
5 proper release of a video or audio recording that depicts a law enforcement
6 officer's death while taking into account the privacy belonging to the family
7 members of the deceased law enforcement officer. Therefore, an emergency is
8 declared to exist, and this act being immediately necessary for the
9 preservation of the public peace, health, and safety shall become effective
10 on:

11 (1) The date of its approval by the Governor;

12 (2) If the bill is neither approved nor vetoed by the Governor,
13 the expiration of the period of time during which the Governor may veto the
14 bill; or

15 (3) If the bill is vetoed by the Governor and the veto is
16 overridden, the date the last house overrides the veto.

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18 /s/Gazaway
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