

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

# A Bill

SENATE BILL 152

5 By: Senator B. Johnson  
6 By: Representatives Gazaway, Tosh  
7

## 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

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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:  
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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; or

11 (4)(A) Prohibit a prosecuting attorney, deputy prosecuting  
 12 attorney, defense counsel pursuant to a motion of discovery, their staff, or  
 13 attorneys involved in civil litigation involving the death of a law  
 14 enforcement officer from obtaining or copying a record described in  
 15 subdivision (b)(1) of this section.

16 (B) A record obtained or copied under subdivision  
 17 (e)(4)(A) of this section shall not be reproduced, transmitted, or  
 18 disseminated for any purpose not authorized under this section.

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 20 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
 21 General Assembly of the State of Arkansas that it is of public interest to  
 22 protect the privacy of the family members of a deceased law enforcement  
 23 officer; that currently, there are no safeguards or procedure in place to  
 24 ensure that a recording that depicts the death of a law enforcement officer  
 25 is released in a proper, respectful, and authorized manner; and that this act  
 26 is immediately necessary because it provides a balanced procedure to achieve  
 27 proper release of video or audio recording that depicts a law enforcement  
 28 officer's death while taking into account the privacy belonging to the family  
 29 members of the deceased law enforcement officer. Therefore, an emergency is  
 30 declared to exist, and this act being immediately necessary for the  
 31 preservation of the public peace, health, and safety shall become effective  
 32 on:

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

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

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

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