

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H3/8/21 S4/21/21

A Bill

HOUSE BILL 1323

5 By: Representative Gazaway
6 By: Senator T. Garner
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS IN-LIFE PHOTOGRAPH ACT;
10 PERMITTING THE IN-LIFE PHOTOGRAPH OF A CRIME VICTIM
11 TO BE DISPLAYED AT THE TRIAL OF A PERSON ACCUSED OF
12 COMMITTING THE HOMICIDE; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO CREATE THE ARKANSAS IN-LIFE PHOTOGRAPH
16 ACT; AND PERMITTING THE IN-LIFE
17 PHOTOGRAPH OF A CRIME VICTIM TO BE
18 DISPLAYED AT THE TRIAL OF A PERSON
19 ACCUSED OF COMMITTING THE HOMICIDE.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. DO NOT CODIFY. Legislative findings.
26 The General Assembly finds that:

27 (1) In furtherance of the administration of justice in the State
28 of Arkansas, there is a compelling governmental interest to allow a person
29 who has been the victim of a crime the right to be present at all proceedings
30 at which the defendant accused of committing the homicide has the right to be
31 present;

32 (2) A crime scene or autopsy photograph of a person who has been
33 the victim of a homicide that is typically introduced to a judge and jury is
34 not an acceptable substitution for the presence in the courtroom of the
35 person who has been the victim of a homicide;

36 (3) The introduction of an admissible crime scene or autopsy



1 photograph does not effectively communicate to a judge or jury the personhood
2 of the person who has been the victim of a homicide;

3 (4) Due to the nature of homicide crimes, a trial involving a
4 homicide offense stands apart from other trials in that the person who has
5 been the victim of a homicide can neither be present nor seek justice himself
6 or herself;

7 (5) It is the policy of the State of Arkansas that the display
8 of an in-life photograph of a person who has been the victim of a homicide is
9 not by its nature inflammatory or likely to unduly provoke the sympathies of
10 a judge or jury to a degree as to unfairly prejudice a person accused of
11 committing the homicide or otherwise override the compelling public interest
12 of allowing a person who has been the victim of a homicide to be
13 appropriately represented at a homicide trial;

14 (6) It is a legitimate and compelling policy interest of the
15 State of Arkansas that the courts afford persons who have been victims of a
16 homicide the same consideration as persons who have been the victims of other
17 crimes; and

18 (7) There is a compelling public interest in ensuring that
19 persons who have been a victim of a homicide are granted a respectful
20 presence in a courtroom, not merely a presence diminished in humanity as
21 depicted in a crime scene or autopsy photograph that cannot capture the
22 personhood of the person who once lived, but depicted as a real person, and
23 this compelling public interest is narrowly tailored to achieve this public
24 policy by allowing an appropriate and respectful in-life photograph of the
25 person who has been the victim of a homicide to be displayed to a judge or
26 jury during a trial for a homicide offense.

27
28 *SECTION 2. Arkansas Code Title 16, Chapter 90, Subchapter 11, is*
29 *amended to add an additional section to read as follows:*

30 16-90-1116. Photograph of deceased person in homicide case.

31 (a) This section shall be known and may be cited as the "Arkansas In-
32 Life Photograph Act".

33 (b)(1) In a homicide case, the state has a right to have a photograph
34 depicting the deceased person as he or she appeared in life before the crime
35 occurred admitted and displayed at trial during the state's case-in-chief, if
36 the photograph is submitted by the prosecution and is a reasonable, accurate,

1 and appropriate depiction of the deceased person, subject to Rule 403 of the
2 Arkansas Rules of Evidence and any other rule or law.

3 (2) The court may limit the size of the photograph, the length
4 of time the photograph is displayed, and give a limiting instruction to the
5 jury as to the weight the photograph should be afforded.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/Gazaway