

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H2/3/17
A Bill

HOUSE BILL 1236

By: Representatives Gazaway, Tosh

By: Senator B. Johnson

For An Act To Be Entitled

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

Subtitle

TO PROTECT THE PRIVACY OF SURVIVING FAMILY MEMBERS OF A LAW ENFORCEMENT OFFICER WHO DIES IN THE LINE OF DUTY; AND TO EXEMPT CERTAIN LAW ENFORCEMENT RECORDS FROM DISCLOSURE; AND TO DECLARE AN EMERGENCY.

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

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

The General Assembly finds and determines that:

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

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

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



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

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

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

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

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

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

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

Subchapter 6 – Law Enforcement Agencies in General

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

(a) As used in this section:

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

recording or to listen to an audio recording;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) This section does not:

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

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

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

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

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

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

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

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

(a) The Law Enforcement Training Academy;

(b) The Criminal Justice Institute;

(c) The Arkansas Law Enforcement Training Academy; or

(d) Other law enforcement officer training programs.

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

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

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

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

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

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

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

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

/s/Gazaway

APPROVED: 03/20/2017