

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

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

HOUSE BILL 1323

By: Representative Gazaway
By: Senator T. Garner

For An Act To Be Entitled

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

Subtitle

TO CREATE THE ARKANSAS IN-LIFE PHOTOGRAPH
ACT; AND PERMITTING THE IN-LIFE
PHOTOGRAPH OF A CRIME VICTIM TO BE
DISPLAYED AT THE TRIAL OF A PERSON
ACCUSED OF COMMITTING THE HOMICIDE.

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

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

/s/Gazaway