

BILL ANALYSIS

Senate Research Center
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S.B. 1512
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Open Government
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1512 amends what must be disclosed under the Texas Public Information Act to exclude certain crime scene pictures. Specifically, pictures that depict a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia are not required to be disclosed under an open records request.

While credentialed newspapers in Texas are unlikely to reproduce these pictures in the paper, the problem lies in ordinary people being able to request the pictures and then reproducing them on the Internet. This makes it very difficult for the victims' families to move on and heal after losing a loved one.

There are several exceptions as to who can view and reproduce the pictures. First, there is an exception for a victim's next of kin, or for someone who has permission from the victim's next of kin. Also, a defendant in the case, or the defendant's representative, may view and reproduce the pictures as necessary for the criminal case. There are also exceptions for credentialed members of the press as well as those associated with a credentialed university who want to view or reproduce the pictures. Finally, a judge can order the release of the pictures if disclosure is in the public's best interest.

As proposed, S.B. 1512 amends current law relating to the confidentiality of certain crime scene photographs and video recordings and provides a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 56, Code of Criminal Procedure, by adding Subchapter E, as follows:

SUBCHAPTER E. CONFIDENTIALITY OF CRIME SCENE PHOTOGRAPHS AND RECORDINGS

Art. 56.151. DEFINITIONS. Defines "deceased person's next of kin," "local governmental entity," "news media," "public or private institution of higher education," "sensitive crime scene image," and "state agency" in this subchapter.

Art. 56.152. APPLICABILITY. (a) Provides that this subchapter applies to a state agency and a local governmental entity.

(b) Provides that this subchapter applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Art. 56.153. CONFIDENTIALITY OF SENSITIVE CRIME SCENE IMAGES. (a) Provides that a sensitive crime scene image in the custody of a person to whom this

subchapter applies is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(b) Prohibits the custodian of a sensitive crime scene image from permitting a person to view or copy the image except as provided by this subchapter.

Art. 56.154. RIGHT TO VIEW AND COPY SENSITIVE CRIME SCENE IMAGES.

(a) Entitles the following persons to view a sensitive crime scene image of a deceased person:

- (1) the deceased person's next of kin;
- (2) a person authorized in writing by the deceased person's next of kin;
- (3) a defendant being prosecuted for the death of the deceased person or the defendant's attorney or a person convicted of an offense in relation to that death and appealing that conviction or that person's attorney;
- (4) a bona fide member of the news media who is engaging in a news-gathering activity; and
- (5) a person performing bona fide research sponsored by a public or private institution of higher education with approval of a supervisor of the research or supervising faculty member.

(b) Entitles the following persons to make a copy of a sensitive crime scene image of a deceased person:

- (1) the deceased person's next of kin;
- (2) a person authorized in writing by the deceased person's next of kin;
- (3) a defendant being prosecuted for the death of the deceased person or the defendant's attorney or a person convicted of an offense in relation to that death and appealing that conviction or that person's attorney;
- (4) a bona fide member of the news media who is engaging in a news-gathering activity, but only in accordance with a court order under Article 56.105 [sic]; and
- (5) a person performing bona fide research sponsored by a public or private institution of higher education with approval of a supervisor of the research or supervising faculty member, but only in accordance with a court order under Article 56.105 [sic].

(c) Requires the custodian of a sensitive crime scene image, before releasing the image, to notify the deceased person's next of kin of the request for the image. Prohibits the custodian from releasing the image before the 14th day after the date the custodian provides the notice.

Art. 56.155. COURT ORDER TO AUTHORIZE COPYING OF SENSITIVE CRIME SCENE IMAGES. (a) Authorizes a person described by Article 56.154(b)(4) or (5) to petition a district court in the county in which the death occurred for permission to copy a sensitive crime scene image of the deceased person.

(b) Authorizes the district court, on a showing of good cause, to:

- (1) issue the order authorizing the person to copy the sensitive crime scene image; and

(2) prescribe any restriction or stipulation relating to the copying or to the use of the copy the court considers necessary or appropriate.

(c) Requires a person requesting permission to copy a sensitive crime scene image to serve a copy of the petition on the deceased person's next of kin not later than the 14th day before the date of a court hearing on the matter.

(d) Requires the court, in determining good cause, to:

(1) conduct an in camera review of each sensitive crime scene image in question;

(2) consider:

(A) whether disclosure of the sensitive crime scene image is necessary for the public evaluation of governmental performance;

(B) the seriousness of the intrusion into the right to privacy of the deceased person's family;

(C) whether the disclosure is the least intrusive means available; and

(D) the availability of similar information in other public records, regardless of form.

(e) Requires that the copying of a sensitive crime scene image under this subchapter be under the direct supervision of the custodian of the sensitive crime scene image or a person designated by the custodian.

Art. 56.156. APPEAL FROM COURT ORDER. Authorizes that the granting or denial of an order under Article 56.155 be appealed in the manner provided for other civil proceedings.

Art. 56.157. PENALTIES. (a) Provides that a person commits an offense if the person:

(1) knowingly violates Article 56.153(b); or

(2) knowingly violates a court order issued under Article 56.155.

(b) Provides that an offense under this article is a Class C misdemeanor.

SECTION 2. (a) Provides that the change in law made by this Act applies only to the disclosure or copying of a crime scene photograph or recording on or after September 1, 2013.

(b) Provides that the disclosure or copying of a crime scene photograph or recording before September 1, 2013, is covered by the law in effect when the photograph or recording was disclosed or copied, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2013.