

SENATOR LOONEY:

Thank you, Madam President.

And, Madam President, if I might inquire of the Clerk as to whether he is now in possession of LCO 8864 for Senate Bill 1149.

THE CHAIR:

He is, sir.

SENATOR LOONEY:

He is, okay.

Then, Madam President, I would ask the Clerk to call Calendar Page 38, Calendar 448, Senate Bill 1149.

Thank you, Madam President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 38, Calendar 448, Substitute for Senate Bill Number 1149, AN ACT MAKING TECHNICAL CHANGES TO THE STATUTE CONCERNING ACCESS TO PUBLIC RECORDS, Favorable Report of the Committee on Government, Administration and Elections and there is an amendment.

THE CHAIR:

Senator Williams, good morning, sir.

SENATOR WILLIAMS:

Good morning, Madam President.

I move adoption and passage of the bill before us.

THE CHAIR:

The motion is on adoption and passage.

Could we -- Senator Williams, I think we have to wait a moment.

The Senate will stand at ease for a moment.

(Chamber at ease.)

THE CHAIR:

Senator Williams.

SENATOR WILLIAMS:

Good morning, Madam President.

THE CHAIR:

Good morning, sir.

SENATOR WILLIAMS:

I had moved adoption and passage of the bill before us.

THE CHAIR:

You have, sir.

SENATOR WILLIAMS:

And at this time I would like to call a strike-all amendment and ask the Clerk to call LCO Number 8864.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 8864, Senate "A", offered by Senator Williams, et al.

THE CHAIR:

Senator Williams.

SENATOR WILLIAMS:

Thank you, Madam President.

In less than 24 hours our regular --

THE CHAIR:

Sir, would you like to move adoption of the amendment?

SENATOR WILLIAMS:

Thank you, Madam President.

I move adoption and passage of the amendment before us.

THE CHAIR:

The motion is on adoption.

Will you remark, sir?

SENATOR WILLIAMS:

Madam President, in less than 24 hours our official session here in 2013 will come to an end. In many ways it is ending as it began with Legislators in the House and the Senate, with Democrats and Republicans working together to respond to the tragedy at the Sandy Hook Elementary School.

The amendment before us balances important and critical interests. Behind me, Madam President, are some of the parents and relatives of those who lost loved ones at Sandy Hook. The interests that we balance are critical to them. They are also critical to our democracy.

Abraham Lincoln said let the people know the facts and the country will be safe. Walter Lippmann said the theory of a free press is that the truth will emerge from free reporting and discussion not that it will be presented perfectly and instantly in any one account.

At the same time, Madam President, Justice Louis Brandeis many years ago recognized an essential right to privacy in the United States. That right to privacy has evolved over decades and most recently just last year in the U. S. Court of Appeals in the Ninth Circuit, the case of *Marsh v. County of San Diego* was decided.

Chief Judge Kozinski concluded, and I quote, that a mother has a constitutionally protected right to privacy over her child's

death images. Chief Judge Kozinski found that that right is not based on common law. That right is not based on a federal statutory right but that is a matter of substantive due process protected by the U. S. Constitution.

Judge Kozinski said few things are more personal than the graphic details of a close family member's tragic death. And in conclusion the court in Marsh held the Constitution protects a parent's right to control the physical remains, memory and images of a deceased child against unwarranted public exploitation.

So, Madam President, that's what we have worked very hard to balance the public's right to know with the constitutionally protected right to privacy. Our amendment, that becomes the bill, is quite simple and I will briefly recount it before yielding to my colleague and friend, Senator McKinney.

Section 1 protects records that disclose the identity of minor child witnesses and this is in response to the Newtown case where children who are witnesses sign affidavits. Those affidavits are protected from release and their identity is protected from release.

However, if a child does not actually sign the affidavit, but is nonetheless known to the authority, then that particular affidavit actually is public. So this corrects that technical issue so that all of the statements of the children, and going forward the identity of minor witnesses, are protected.

In Section 2, Madam President, we address the same issue that was addressed in the Ninth Circuit in Marsh, that is, images, photographs, film, video, digital or otherwise, depicting the victim of a homicide, we create a new exemption under our Freedom of Information statutes.

This statute tracks closely language that is in the federal Freedom of Information exemption and it protects it such that the image could be reasonably expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members.

In Section 3 there is a one-year moratorium on audio tapes, a portion of which describes the condition of a victim of homicide. This does not include a 911 emergency call or other calls for assistance made by a member of the public to a law

enforcement agency. It is a narrow exception, Madam President, and it will sunset on May 7th of next year.

Now in the meantime, Section 4 of the bill creates a task force. That task force will evaluate Section 3 where we're having a moratorium to see if we need to revisit that issue and other issues related to personal privacy and will look towards striking an appropriate balance between victim privacy, under the Freedom of Information statutes, and the public -- the public's right to know.

Their first meeting, Madam President, will be in August. Their report due back to the leadership, the Majority and Minority leadership of the General Assembly, is due on January 1, 2014.

So it is very simple, Madam President. It is straightforward. We have tried our best, as Democrats and Republicans, to work together to protect the interests of these families, these parents, these relatives sitting behind me, at the same time honoring our tradition as a free and open democracy.

So, Madam President, with that let me yield again to my friend and colleague who has spent so much time on this issue and so much time listening to, and caring for, the families and relatives of those who passed at Sandy Hook, Senator McKinney.

THE CHAIR:

Senator McKinney, will you accept the yield, sir?

SENATOR MCKINNEY:

I do accept the yield, Madam President.

And, Madam President, before I begin my brief remarks, if I could, through you, for purposes of legislative intent, ask a question of Senator Williams.

THE CHAIR:

Please proceed, sir.

SENATOR MCKINNEY:

Thank you, Madam President.

Senator Williams, in Section 2, the new subdivision 27 which reads any record created by a law enforcement agency or other federal, state or municipal governmental agency consisting of a photograph, film, video or digital or other visual image depicting the victim of a homicide, to the extent that such record could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members, does that section cover the 26 deceased victims of the tragedy at the Sandy Hook Elementary School?

THE CHAIR:

Senator Williams.

SENATOR WILLIAMS:

Through you, Madam President, to Senator McKinney, the answer is yes. That is, in many respects, the genesis of this legislation.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Madam President.

I thank Senator Williams and that's my lone question.

Madam President, and members of the Senate, the intent of what we're doing here is very clear. That the public disclosure of an image of the dead body of a brutally murdered child or spouse or sibling would cause emotional harm and violate the personal privacy of the parents and other surviving family members.

One does not need to see the photos to understand the unwarranted pain and anguish it would cause a parent or other family member to see such photos published and appear on the internet every time someone searches Sandy Hook or school shooting.

Particularly in this case when we know who the perpetrator was and that he is deceased and where there is no legitimate claim of official misconduct there can be no public interest that would require the disclosure of such intensely painful pictures.

In this case it is our clear intent that the privacy interests of the victims and their families outweighs any public interest in the disclosure of the photos of the Sandy Hook victims.

This is a narrow protection offered in this bill and it is not unusual or novel. Federal Freedom of Information laws, as well as old English Common Law, have long recognized the privacy interests of crime victims and their families and have protected the privacy of private individuals absent a significant and specific public interest and that's what this bill is. It is modeled on well-established federal law and recognizes those privacy interests.

Senator Williams referenced a Ninth Circuit case. There is also a United States Supreme Court case, National Archives and Records Administration v. Favish.

Madam President, I wanted to leave the balance of my remarks and say on behalf of the Newtown delegation and this Legislature, myself, Representatives Debra Lee Hovey, Mitch Bolinsky and Dan Carter two words which, at this moment, often seem inadequate and that's thank you.

First I'll apologize to those who I should thank but have forgotten but thank you to Senator Williams for his leadership on this issue and to our Majority Leader, Senator Looney, for his leadership. He told me not to thank him but this wouldn't have happened if Senator Fasano hadn't been the amazing human being that he is for the last four days, so thank you.

If I mentioned all of the Senators who have helped, I would mention all 36 of us. To the Senate Republican Caucus and my colleagues I can't say thank you enough. They have essentially said John, we want to do whatever we can to help you to help them.

To the members of the Democrat Caucus, each and every one of you has come up to me, time and time again, and offered your help.

I also want to thank Jen Macierowski, our chief legal counsel for her fantastic work and Joel Rudikoff who did extraordinary work on behalf of the Senate Democrat Caucus.

In the House I want to thank Speaker Sharkey and I'm sure glad we went to high school together because he's a great -- a great man and I want to thank the Majority Leader, Joe Aresimowicz, for his leadership.

I want to thank Larry Cafero, my friend who, like my Caucus, said to me John, you tell me what you need and we'll do it for you down here.

I also want to thank their respective counsels, Dallas Dodge and -- for the House Democrats and Deb Hutton for the House Republicans.

I want to pay a special thank you to Representative Juan Candelaria and the Black and Puerto Rican Caucus for their tremendous compassion and leadership in helping us get to where we are as well as the good Chairman of the Judiciary Committee, Representative Gerry Fox and Representative Bob Godfrey.

I also want to thank Governor Malloy who has been unwavering in his support for the families and for the people of Newtown and yourself, Madam President, our Lieutenant Governor, who has been equally as strong and unwavering and always there whenever we need you and the Governor's Chief of Staff and his entire office but specifically Mark Ojakian who was instrumental in this passing as well.

Lastly I want to thank the families of those 26 victims. I want to thank them for having faith in us and in our system and in our government that we would work together to get the right thing done and I believe we've done that and struck that balance that Senator Williams talked about.

I want to thank them for their love, for their compassion, for their courage in what must be the most horrific moment anyone could imagine. They have shown what true love and compassion is all about and I want to thank them as well.

Madam President, I would yield back to Senator Williams.

THE CHAIR:

Senator Williams, will you accept the yield, sir?

SENATOR WILLIAMS:

Yes, Madam President.

I simply move adoption of this amendment.

THE CHAIR:

At this point, Mr. Clerk.

It's a voice vote. It's on the amendment, Senate "A". All -- I'll try your minds. All in favor on Senate "A" please say aye.

SENATORS:

Aye.

THE CHAIR:

Opposed?

Senate "A" has passed.

At this time, Mr. Clerk, will you please call for a roll call vote and the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Senators please return to the Chamber. Immediate roll call has been ordered in the Senate.

THE CHAIR:

If all members have voted, if all members have voted, the machine will be closed. Mr. Clerk, will you please call the tally.

THE CLERK:

Senate Bill Number 1149, as amended.

Total Number Voting 35

Necessary for Adoption 18

Those voting Yea 33

Those voting Nay 2

Absent and not voting 1

THE CHAIR:

The bill passes.

SENATOR LOONEY:

Madam President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, I move for immediate transmittal to the House of Representatives of Calendar Page 38, Calendar 448, Senate Bill 1149 as amended.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.