

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1543
Committee Substitute Favorable 5/31/05

Short Title: Autopsy Photos not Public Record.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"§ 130A-389. Autopsies.

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A~~ Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or

1 other study shall be paid by the State. However, if the deceased is a resident of the
2 county in which the death or fatal injury occurred, that county shall pay the fee. The fee
3 shall be one thousand dollars (\$1,000).

4 (b) In deaths where the Chief Medical Examiner and the medical examiner
5 investigating the case do not deem it advisable and in the public interest that an autopsy
6 be performed, but the next-of-kin of the deceased requests that an autopsy be
7 performed, the Chief Medical Examiner or a designated pathologist may perform the
8 autopsy and the cost shall be paid by the next-of-kin.

9 (c) When the next-of-kin of a decedent whose death does not fall under
10 G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical
11 Examiner or a designated pathologist may perform that autopsy and the cost shall be
12 paid by the next-of-kin.

13 (d) The report of autopsies performed pursuant to subsections (b) and (c) shall be
14 a part of the decedents' medical records and therefore not public records open to
15 inspection."

16 **SECTION 3.** Chapter 130A of the General Statutes is amended by adding
17 the following new section to read:

18 **§ 130A-389.1. Photographs and video or audio recordings made pursuant to**
19 **autopsy.**

20 (a) Except as otherwise provided by law, any person may inspect and examine
21 original photographs or video or audio recordings of an autopsy performed pursuant to
22 G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian
23 of the photographs or recordings. Except as otherwise provided by this section, no
24 custodian of the original recorded images shall furnish copies of photographs or video
25 or audio recordings of an autopsy to the public. For purposes of this section, the Chief
26 Medical Examiner shall be the custodian of all autopsy photographs or video or audio
27 recordings unless the photographs or recordings were taken by or at the direction of an
28 investigating medical examiner and the investigating medical examiner retains the
29 original photographs or recordings. If the investigating medical examiner has retained
30 the original photographs or recordings, then the investigating medical examiner is the
31 custodian of the photographs or video or audio recordings and must allow the public to
32 inspect and examine them in accordance with this subsection.

33 (b) The following public officials may obtain copies of autopsy photographs or
34 video or audio recordings for official use only. These public officials shall not disclose
35 the photographs or video or audio recordings to the public except as provided by law:

- 36 (1) The Chief Medical Examiner or a pathologist designated by the Chief
37 Medical Examiner.
- 38 (2) Investigating Medical Examiner.
- 39 (3) District attorney.
- 40 (4) Superior court judge.
- 41 (5) Law enforcement officials conducting an investigation relating to the
42 death.

1 A public official authorized by this subsection to obtain copies may provide a copy of
2 the photograph or videotape to another person for the sole purpose of aiding in the
3 identification of the deceased through publication of the photograph or videotape.

4 (c) The following persons may obtain copies of autopsy photographs or video or
5 audio recordings but may not disclose the photographs or video or audio recordings to
6 the public unless otherwise authorized by law:

7 (1) The personal representative of the estate of the deceased.

8 (2) A person authorized by an order issued in a special proceeding
9 pursuant to subsection (d) of this section.

10 (3) A physician licensed to practice in North Carolina who uses a copy of
11 the photographs or video or audio recording to confer with attorneys or
12 others with a bona fide professional need to use or understand forensic
13 science, provided that the physician promptly returns the copy to the
14 custodian.

15 (4) After redacting all information identifying the decedent, including
16 name, address, and social security number, and after anonymizing any
17 physical recognition, a medical examiner, coroner, physician, or their
18 designee who uses such material for:

19 a. Medical or scientific teaching or training purposes;

20 b. Teaching or training of law enforcement personnel;

21 c. Teaching or training of attorneys or others with a bona fide
22 professional need to use or understand forensic science;

23 d. Conferring with medical or scientific experts in the field of
24 forensic science; or

25 e. Publication in a scientific or medical journal or textbook.

26 A medical examiner, coroner, or physician who has in good faith
27 complied with this subsection shall not be subject to any penalty under
28 this section.

29 Any person who lawfully obtains a copy of a photograph or video or audio recording
30 pursuant to this subsection shall be required to sign a statement acknowledging that they
31 have received notice that any unauthorized disclosure of the photograph or video or
32 audio recording is a Class 2 misdemeanor.

33 (d) A person who is denied access to copies of photographs or video or audio
34 recordings, or who is restricted in the use the person may make of the photographs or
35 video or audio recordings under this section, may commence a special proceeding in
36 accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of
37 good cause, the clerk may issue an order authorizing the person to copy or disclose a
38 photograph or video or audio recording of an autopsy and may prescribe any restrictions
39 or stipulations that the clerk deems appropriate. In determining good cause, the clerk
40 shall consider whether the disclosure is necessary for the public evaluation of
41 governmental performance; the seriousness of the intrusion into the family's right to
42 privacy and whether the disclosure is the least intrusive means available; and the
43 availability of similar information in other public records, regardless of form. In all
44 cases, the viewing, copying, listening to, or other handling of a photograph or video or

1 audio recording of an autopsy shall be under the direct supervision of the Chief Medical
2 Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of
3 the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter
4 1 of the General Statutes.

5 (e) The petitioner shall provide reasonable notice of the commencement of a
6 special proceeding, as authorized by subsection (d) of this section, and reasonable notice
7 of the opportunity to be present and heard at any hearing on the matter in accordance
8 with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal
9 representative of the estate of the deceased, if any, and to the surviving spouse of the
10 deceased. If there is no surviving spouse, then the notice shall be provided to the
11 deceased's parents, and if the deceased has no living parent, then to the adult child of the
12 deceased or to the guardian or custodian of a minor child of the deceased.

13 (f) This section does not apply to the use of autopsy photographs or video or
14 audio recordings in a criminal, civil, or administrative proceeding except that nothing in
15 this section prohibits a court or presiding officer, upon good cause shown, from
16 restricting or otherwise controlling the disclosure to persons other than the parties and
17 attorneys to the proceeding of an autopsy, crime scene, or similar photograph or video
18 or audio recordings in the manner provided under this section.

19 (g) Any person who willfully and knowingly violates this section is guilty of a
20 Class 2 misdemeanor, provided that more than one disclosure of the same item by the
21 same person is not a separate offense.

22 (h) Any person not authorized by this section to obtain a copy of an autopsy
23 photograph or video or audio recording, who knowingly and willfully removes, copies,
24 or otherwise creates an image of an autopsy photograph or video or audio recording
25 with intent to steal the same, is guilty of a Class 1 misdemeanor."

26 **SECTION 4.** This act becomes effective July 1, 2005, and applies to
27 offenses committed on or after that date. This act applies to all unauthorized disclosures
28 of autopsy photographs or video or audio recordings that occur on or after the effective
29 date, regardless of whether the autopsy was performed before or after that date.