

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1543  
Committee Substitute Favorable 5/31/05  
Senate Judiciary I Committee Substitute Adopted 8/12/05

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

1 shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or  
2 other study shall be paid by the State. However, if the deceased is a resident of the  
3 county in which the death or fatal injury occurred, that county shall pay the fee. The fee  
4 shall be one thousand dollars (\$1,000).

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

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

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

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

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

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

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

37 (1) The Chief Medical Examiner or a pathologist designated by the Chief  
38 Medical Examiner.

39 (2) Investigating Medical Examiner.

40 (3) District attorney.

41 (4) Superior court judge.

42 (5) Law enforcement officials conducting an investigation relating to the  
43 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 December 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.