

AMENDED IN ASSEMBLY AUGUST 19, 2010

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 13, 2009

AMENDED IN SENATE MARCH 16, 2009

SENATE BILL

No. 5

Introduced by Senator ~~Maldonado~~ Hollingsworth

December 1, 2008

~~An act relating to peace officers.~~ *An act to add Section 130 to the Code of Civil Procedure, relating to victims' rights, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as amended, ~~Maldonado~~ Hollingsworth. ~~Peace officers: certified bomb technicians.~~ *Deceased Child Victims' Protection and Privacy Act.*

Existing law prohibits the making of a copy, reproduction, or facsimile of any kind of photographs, negatives, or print of the body, or any portion of the body, of a deceased person taken by or for the coroner at the scene of death or in the course of a postmortem exam or autopsy made by or caused to be made by the coroner, except for use in a criminal proceeding in this state that relates to the death of that person, or except as a court of this state permits, as specified.

The California Public Records Act generally provides that public records, as defined, are open to public inspection and every person has a right to inspect any public record. The act sets forth specified exemptions from those provisions, including an exemption for specified investigatory or security files compiled by law enforcement entities.

This bill would enact the Deceased Child Victims' Protection and Privacy Act. The bill would provide that, when a minor who is not within the jurisdiction of the juvenile court, as specified, is killed as a result of a criminal act and a person has been convicted of the crime and sentenced, or been found to have committed the act by a juvenile court and adjudged a ward of the juvenile court, upon the request of a qualifying family member of the deceased minor, the autopsy report and evidence associated with the examination of the victim in the possession of a public agency would be sealed and would not be disclosed, except as specified. The bill would also provide that a coroner or medical examiner shall not be liable for damages in a civil action for any act or omission taken in compliance with these provisions. These provisions would not be construed to limit the authority of the court to seal records or restrict the dissemination of an autopsy report or evidence associated with the examination of a victim, as specified. In addition, these provisions would establish an independent basis upon which an autopsy report or other evidence associated with the examination of a victim may be withheld from public disclosure; however, these provisions would not apply if the above-described exemption from the California Public Records Act applies.

Because the bill would impose additional duties on local officials, such as the county coroner, the district attorney, or the public defender, relating to preventing the disclosure of this information, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes which persons are included in the definition of peace officers. Existing law requires that persons desiring peace officer status who were not entitled to be designated as peace officers, as specified, shall request the Commission on Peace Officer Standards and Training to undertake a feasibility study regarding designating those persons as peace officers.~~

~~This bill would require the commission, upon receiving a request, to conduct a feasibility study regarding designating as peace officers members of a fire department bomb squad unit who are certified, by December 31, 2009, by the Federal Bureau of Investigation as certified bomb technicians. The bill would specify that the commission may seek reimbursement for the reasonable cost of the study from the requesting person or entity.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~^{yes}.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *Deceased Child Victims' Protection and Privacy Act.*

3 *SEC. 2. The Legislature hereby finds and declares all of the*
4 *following:*

5 *(a) (1) Thousands of Californians are murdered each year, a*
6 *statistic that has remained steady for over 30 years. The emotional*
7 *pain suffered by the families of these lost victims is unimaginable.*
8 *That pain is relived through criminal proceedings, which serve as*
9 *a troubling reminder of the suffering that loved ones endured*
10 *before their lives were taken.*

11 *(2) No document is more telling of the specific nature of a*
12 *victim's injuries than the autopsy report crafted by a medical*
13 *examiner. For the family of a crime victim, the writing and*
14 *diagrams contain the details of a loved one's last experiences in*
15 *this world.*

16 *(b) The purpose of this act is to protect the privacy of the*
17 *families of deceased minor victims of violent crimes by allowing*
18 *them to request that autopsy reports not be subject to requests for*
19 *disclosure made pursuant to the California Public Records Act*
20 *(Chapter 3.5 (commencing with Section 6250) of Division 1 of*
21 *Title 1 of the Government Code), except as specified.*

22 *(c) This act is intended to limit the dissemination of autopsy*
23 *and private medical information concerning a murdered child by*
24 *allowing families to request that the autopsy report of the victim*
25 *be sealed from public inspection. This act is not intended to affect*
26 *the dissemination of those reports to law enforcement agents,*
27 *prosecutors, defendants, or civil litigants under state and federal*
28 *discovery laws.*

1 *SEC. 3. Section 130 is added to the Code of Civil Procedure,*
2 *to read:*

3 *130. (a) Subject to the provisions of this section, when a child*
4 *who is under 18 years of age is killed as a result of a criminal act*
5 *and a person has been convicted and sentenced for the commission*
6 *of that criminal act, or a person has been found to have committed*
7 *that offense by the juvenile court and adjudged a ward of the*
8 *juvenile court, upon the request of a qualifying family member of*
9 *the deceased child, the autopsy report and evidence associated*
10 *with the examination of the victim in the possession of a public*
11 *agency shall be sealed and not disclosed, except that an autopsy*
12 *report and evidence associated with the examination of the victim*
13 *which has been sealed pursuant to this section may be disclosed,*
14 *as follows:*

15 *(1) To law enforcement, prosecutorial agencies and experts*
16 *hired by those agencies, public social service agencies, child death*
17 *review teams, or the hospital that treated the child immediately*
18 *prior to death, to be used solely for investigative, prosecutorial,*
19 *or review purposes, and may not be disseminated further.*

20 *(2) To the defendant and the defense team and experts hired by*
21 *the defense team in the course of criminal proceedings or related*
22 *habeas proceedings, to be used solely for investigative and review*
23 *purposes and may not be disseminated further.*

24 *(3) To civil litigants in a cause of action related to the victim's*
25 *death with a court order upon a showing of good cause and proper*
26 *notice under Section 129, to be used solely to pursue the cause of*
27 *action, and may not be disseminated further.*

28 *(b) Nothing in this section shall prohibit the use of autopsy*
29 *reports and evidence in relation to court proceedings.*

30 *(c) Nothing in this section shall abrogate the rights of victims,*
31 *their authorized representatives, or insurance carriers to request*
32 *the release of information pursuant to subdivision (f) of Section*
33 *6254 of the Government Code. However, if a seal has been*
34 *requested, an insurance carrier receiving items pursuant to a*
35 *request under that subdivision is prohibited from disclosing the*
36 *requested items except as necessary in the normal course of*
37 *business. An insurance carrier shall not, under any circumstances,*
38 *disclose to the general public items received pursuant to*
39 *subdivision (f) of Section 6254 of the Government Code.*

1 (d) This section may not be invoked by a qualifying family
2 member who has been charged with or convicted of any act in
3 furtherance of the victim's death. Upon the filing of those charges
4 against a qualifying family member, any seal maintained at the
5 request of that qualifying family member under this section shall
6 be removed.

7 (e) A coroner or medical examiner shall not be liable for
8 damages in a civil action for any reasonable act or omission taken
9 in good faith in compliance with this section.

10 (f) If sealing of the autopsy report has been requested by a
11 qualifying family member and another qualifying family member
12 opposes sealing, the opposing party may request a hearing in the
13 superior court in the county with jurisdiction over the crime leading
14 to the child's death for a determination of whether the sealing
15 should be maintained. The opposing party shall notify all other
16 qualifying family members, the medical examiner's office that
17 conducted the autopsy, and the district attorney's office with
18 jurisdiction over the crime at least 10 court days in advance of the
19 hearing. At the hearing, the court shall consider the interests of
20 all qualifying family members, the protection of the memory of the
21 deceased child, any evidence that the qualifying family member
22 requesting the seal was involved in the crime that resulted in the
23 death of the child, the public interest in scrutiny of the autopsy
24 report or the performance of the medical examiner, any impact
25 that unsealing would have on pending investigations or pending
26 litigation, and any other relevant factors. Official information in
27 the possession of a public agency necessary to the determination
28 of the hearing shall be received in camera upon a proper showing.
29 In its discretion, the court may, to the extent allowable by law and
30 with good cause shown, restrict the dissemination of an autopsy
31 report or evidence associated with the examination of a victim.
32 This section shall not apply if a public agency has independently
33 determined that the autopsy report may not be disclosed pursuant
34 to subdivision (f) of Section 6254 of the Government Code because
35 it is an investigative file. In that instance, nothing in this section
36 shall preclude the application of Sections 6258 and 6259 of the
37 Government Code.

38 (g) If a seal has been maintained pursuant to this section, a
39 qualifying family member, or a biological or adoptive aunt, uncle,
40 sibling, first cousin, child, or grandparent of the deceased child

1 *may request that the seal be removed. The request to remove the*
2 *seal shall be adjudicated pursuant to subdivision (f), with the party*
3 *requesting the removal of the seal being the opposing party.*

4 *(h) Nothing in this section shall limit the public access to*
5 *information contained in the death certificate including: name,*
6 *age, gender, race, date, time and location of death, the name of a*
7 *physician reporting a death in a hospital, the name of the certifying*
8 *pathologist, date of certification, burial information, and cause of*
9 *death.*

10 *(i) When a medical examiner declines a request to provide a*
11 *copy of an autopsy report that has been sealed pursuant to this*
12 *section, the examiner shall cite this section as the reason for*
13 *declining to provide a copy of the report.*

14 *(j) For purposes of this section:*

15 *(1) A “child who is under 18 years of age” does not include*
16 *any child who comes within either of the following descriptions:*

17 *(A) He or she was a dependent child of the juvenile court*
18 *pursuant to Section 300 of the Welfare and Institutions Code at*
19 *the time of his or her death.*

20 *(B) He or she was residing in a state or county juvenile facility,*
21 *or a private facility under contract with the state or county for the*
22 *placement of juveniles, as a ward of the juvenile court pursuant*
23 *to Section 602 of the Welfare and Institutions Code at the time of*
24 *his or her death.*

25 *(2) “Evidence associated with the examination of a victim”*
26 *means any object, writing, diagram, recording, computer file,*
27 *photograph, video, DVD, CD, film, digital device, or other item*
28 *that was collected during, or serves to document, the autopsy of*
29 *a deceased child.*

30 *(3) “Qualifying family member” means the biological or*
31 *adoptive parent, spouse, or legal guardian.*

32 *(k) Nothing in this section shall limit the discovery provisions*
33 *set forth in Chapter 10 (commencing with Section 1054) of Title*
34 *6 of the Penal Code.*

35 *(l) Nothing in this section shall be construed to limit the*
36 *authority of the court to seal records or restrict the dissemination*
37 *of an autopsy report or evidence associated with the examination*
38 *of a victim under case law, other statutory law, or the rules of*
39 *court.*

1 (m) *The provisions of this section are severable. If any provision*
2 *of this section or its application is held invalid, that invalidity shall*
3 *not affect other provisions or applications that can be given effect*
4 *without the invalid provision or application.*

5 *SEC. 4. If the Commission on State Mandates determines that*
6 *this act contains costs mandated by the state, reimbursement to*
7 *local agencies and school districts for those costs shall be made*
8 *pursuant to Part 7 (commencing with Section 17500) of Division*
9 *4 of Title 2 of the Government Code.*

10 *SEC. 5. This act is an urgency statute necessary for the*
11 *immediate preservation of the public peace, health, or safety within*
12 *the meaning of Article IV of the Constitution and shall go into*
13 *immediate effect. The facts constituting the necessity are:*

14 *In order to prevent, as soon as possible, autopsy information*
15 *concerning deceased children from being made available to the*
16 *public, it is necessary that this act take effect immediately.*

17 ~~SECTION 1. Upon receiving a request in accordance with~~
18 ~~Section 13540 of the Penal Code, the Commission on Peace Officer~~
19 ~~Standards and Training shall conduct a feasibility study regarding~~
20 ~~designating as peace officers, under Section 830.37 of the Penal~~
21 ~~Code, members of a fire department bomb squad unit who are~~
22 ~~certified, as of December 31, 2009, by the Federal Bureau of~~
23 ~~Investigation as certified bomb technicians. The commission may~~
24 ~~seek reimbursement for the reasonable cost of the study from the~~
25 ~~requesting person or entity, as provided in Section 13540 of the~~
26 ~~Penal Code.~~