

Senate Bill No. 5

CHAPTER 302

An act to add Section 130 to the Code of Civil Procedure, and to amend Sections 290.05, 290.09, and 9003 of the Penal Code, relating to criminal victimization, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2010. Filed with
Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 5, Hollingsworth. 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.

Provisions of law proposed by AB 1844 of the 2009–10 Regular Session, an urgency measure, would require every sex offender required to register, as specified, to participate in an approved sex offender management program while on parole or formal supervised probation. AB 1844 would require probation departments and the Department of Corrections and Rehabilitation to enter into contracts with certified sex offender management professionals to provide these programs.

This bill, contingent on the prior approval of AB 1844, would eliminate this contracting requirement and make other related and conforming changes.

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.

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

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

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

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

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

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

(c) This act is intended to limit the dissemination of autopsy and private medical information concerning a murdered child by allowing families to request that the autopsy report of the victim be sealed from public inspection. This act is not intended to affect the dissemination of those reports to law

enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws.

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

130. (a) Subject to the provisions of this section, when a child who is under 18 years of age is killed as a result of a criminal act and a person has been convicted and sentenced for the commission of that criminal act, or a person has been found to have committed that offense by the juvenile court and adjudged a ward of the juvenile court, upon the request of a qualifying family member of the deceased child, the autopsy report and evidence associated with the examination of the victim in the possession of a public agency, as defined in Section 6252 of the Government Code, shall be sealed and not disclosed, except that an autopsy report and evidence associated with the examination of the victim which has been sealed pursuant to this section may be disclosed, as follows:

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

(2) To the defendant and the defense team in the course of criminal proceedings or related habeas proceedings, to be used solely for investigative, criminal defense, and review purposes, including review for the purpose of initiating any criminal proceeding or related habeas proceeding, and may not be disseminated further. The “defense team” includes, but is not limited to, all of the following: attorneys, investigators, experts, paralegals, support staff, interns, students, and state and privately funded legal assistance projects hired or consulted for the purposes of investigation, defense, appeal, or writ of habeas corpus on behalf of the person accused of killing the deceased child victim.

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

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

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

(d) This section may not be invoked by a qualifying family member who has been charged with or convicted of any act in furtherance of the victim’s death. Upon the filing of those charges against a qualifying family member,

any seal maintained at the request of that qualifying family member under this section shall be removed.

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

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

(g) If a seal has been maintained pursuant to this section, a qualifying family member, or a biological or adoptive aunt, uncle, sibling, first cousin, child, or grandparent of the deceased child may request that the seal be removed. The request to remove the seal shall be adjudicated pursuant to subdivision (f), with the party requesting the removal of the seal being the opposing party.

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

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

(j) For purposes of this section:

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

(A) He or she was a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code at the time of his or her death, or, pursuant to subdivision (b) of Section 10850.4 of the Welfare and Institutions Code, abuse or neglect is determined to have led to his or her death.

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

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

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

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

(l) Nothing in this section shall 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 under case law, other statutory law, or the rules of court.

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

SEC. 3.5. Section 290.05 of the Penal Code is amended to read:

290.05. (a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General’s Office, and a representative of the Chief Probation Officers of California.

(b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a training program for persons authorized by this code to administer the static SARATSO, as set forth in Section 290.04.

(c) (1) The Department of Corrections and Rehabilitation shall be responsible for overseeing the training of persons who will administer the static SARATSO pursuant to paragraph (1) or (2) of subdivision (a) of Section 290.06.

(2) The State Department of Mental Health shall be responsible for overseeing the training of persons who will administer the static SARATSO pursuant to paragraph (3) of subdivision (a) of Section 290.06.

(3) The Correction Standards Authority shall be responsible for developing standards for the training of persons who will administer the

static SARATSO pursuant to paragraph (5) or (6) of subdivision (a) of Section 290.06.

(4) The Commission on Peace Officer Standards and Training shall be responsible for developing standards for the training of persons who will administer the static SARATSO pursuant to subdivision (b) of Section 290.06.

(d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the static SARATSO shall receive training no less frequently than every two years.

(e) If the agency responsible for scoring the static SARATSO believes an individual score does not represent the person's true risk level, based on factors in the offender's record, the agency may submit the case to the experts retained by the SARATSO Review Committee to monitor the scoring of the SARATSO. Those experts shall be guided by empirical research in determining whether to raise or lower the risk level. Agencies that score the static SARATSO shall develop a protocol for submission of risk level override requests to the experts retained in accordance with this subdivision.

(f) The static SARATSO may be performed for purposes authorized by statute only by persons trained pursuant to this section. Persons who administer the dynamic SARATSO and the future violence SARATSO shall be trained to administer the dynamic and future violence SARATSO tools as required in Section 290.09. Probation officers or parole agents may be trained by SARATSO experts on the dynamic SARATSO tool and perform assessments on that tool only if authorized by the SARATSO Training Committee to do so after successful completion of training.

SEC. 4. Section 290.09 of the Penal Code, as added by Assembly Bill 1844 of the 2009–10 Regular Session, is amended to read:

290.09. On or before July 2012, the SARATSO dynamic tool and the SARATSO future violence tool, as set forth in Section 290.04, shall be administered as follows:

(a) (1) Every sex offender required to register pursuant to Sections 290 to 290.023, inclusive, shall, while on parole or formal supervised probation, participate in an approved sex offender management program, pursuant to Sections 1203.067 and 3008.

(2) The sex offender management program shall meet the certification requirements developed by the California Sex Offender Management Board pursuant to Section 9003. Probation departments and the Department of Corrections and Rehabilitation shall not employ or contract with, and shall not allow a sex offender to employ or contract with, any individual or entity to provide sex offender evaluation or treatment services pursuant to this

section unless the sex offender evaluation or treatment services to be provided by the individual or entity conforms with the standards developed pursuant to Section 9003.

(b) (1) The sex offender management professionals certified by the California Sex Offender Management Board in accordance with Section 9003 who provide sex offender management programs for any probation department or the Department of Corrections and Rehabilitation shall assess each registered sex offender on formal supervised probation or parole using the SARATSO dynamic tool, when a dynamic risk factor changes, and shall do a final dynamic assessment within six months of the offender's release from supervision. The management professional shall also assess the sex offenders in the program with the SARATSO future violence tool.

(2) The certified sex offender management professional shall, as soon as possible but not later than 30 days after the assessment, provide the person's score on the SARATSO dynamic tool and the future violence tool to the person's parole agent or probation officer. Within five working days of receipt of the score, the parole or probation officer shall send the score to the Department of Justice, and the score shall be accessible to law enforcement through the Department of Justice's Internet Web site for the California Sex and Arson Registry (CSAR).

(c) The certified sex offender management professional shall communicate with the offender's probation officer or parole agent on a regular basis, but at least once a month, about the offender's progress in the program and dynamic risk assessment issues, and shall share pertinent information with the certified polygraph examiner as required.

(d) The SARATSO Training Committee shall provide annual training on the SARATSO dynamic tool and the SARATSO future violence tool. Certified sex offender management professionals shall attend this training once to obtain authorization to perform the assessments, and thereafter attend training updates as required by the SARATSO Training Committee. If a sex offender management professional is certified pursuant to Section 9003 to conduct an approved sex offender management program prior to attending SARATSO training on the dynamic and violent risk assessment tools, he or she shall present to the SARATSO Training Committee proof of training on these tools from a risk assessment expert approved by the SARATSO Training Committee.

SEC. 5. Section 9003 of the Penal Code, as added by Assembly Bill 1844 of the 2009–10 Regular Session, is amended to read:

9003. (a) On or before July 1, 2011, the board shall develop and update standards for certification of sex offender management professionals. All those professionals who provide sex offender management programs and risk assessments, pursuant to Section 290.09, shall be certified by the board according to these standards. The standards shall be published on the board's Internet Web site. Professionals may apply to the board for certification on or after August 1, 2011.

(1) (A) The board shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all

sex offender management applicants, as defined by subdivision (a), for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state arrests or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(B) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the board.

(C) The Department of Justice shall provide a state and federal response to the board pursuant to paragraph (1) of subdivision (l) of Section 11105.

(D) The board shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a).

(2) The board shall require any person who applies for certification under this section to submit information relevant to the applicant's fitness to provide sex offender management services.

(3) The board shall assess a fee to the applicant not to exceed one hundred eighty dollars (\$180) per application. The board shall pay a fee to the Department of Justice sufficient to cover the cost of processing the criminal background request specified in this section.

(b) On or before July 1, 2011, the board shall develop and update standards for certification of sex offender management programs, which shall include treatment, as specified, and dynamic and future violence risk assessments pursuant to Section 290.09. The standards shall be published on the board's Internet Web site. All those programs shall include polygraph examinations by a certified polygraph examiner, which shall be conducted as needed during the period that the offender is in the sex offender management program. Only certified sex offender management professionals whose programs meet the standards set by the board are eligible to provide sex offender management programs pursuant to Section 290.09.

(c) On or before July 1, 2011, the board shall develop and update standards for certification of polygraph examiners. The standards shall be published on the board's Internet Web site.

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

SEC. 7. Sections 3.5, 4, and 5 of this act shall become operative only if Assembly Bill 1844 of the 2009–10 Regular Session is also enacted and this act is enacted after Assembly Bill 1844.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

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