

AMENDED IN SENATE JULY 1, 2010  
AMENDED IN SENATE JUNE 7, 2010  
AMENDED IN SENATE MAY 26, 2010  
AMENDED IN SENATE MAY 3, 2010

**SENATE BILL**

**No. 982**

---

---

**Introduced by Senator Hollingsworth**  
(Principal coauthor: Assembly Member Fletcher)  
**(Coauthors: Senators Ducheny and Harman)**

February 8, 2010

---

---

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 982, as amended, Hollingsworth. ~~Deceased child victim of crime: autopsy information and privacy.~~ *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.

This bill would ~~prohibit~~ *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 the biological, adoptive, or foster parent, spouse, or guardian of a deceased person who was under 18 years of age when he or she was a victim of a crime that caused his or her death a qualifying family member of the deceased minor, the disclosure of 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.*

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.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: 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.*

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

6 (3) *Both the California and United States Constitutions have*  
7 *been construed to vest privacy rights in the families of deceased*  
8 *victims, prohibiting the unnecessary disclosure of that information.*

9 (b) *The purpose of this act is to protect the privacy of the*  
10 *families of deceased victims by allowing them to request that*  
11 *autopsy reports not be subject to public records act requests.*

12 (c) *This act is intended to limit the unnecessary dissemination*  
13 *of autopsy and private medical information concerning a murdered*  
14 *child by acknowledging a family's right to privacy in those*  
15 *documents when there is no compelling interest in disclosure. This*  
16 *act allows families to request that the autopsy report of the victim*  
17 *be sealed from public inspection. This act does not affect the*  
18 *dissemination of the reports to law enforcement agents or*  
19 *prosecutors, and it does not affect their obligations to provide that*  
20 *information to defendants, with a protective order, in compliance*  
21 *with state and federal discovery obligations. This act does not*  
22 *affect the ability of civil litigants, in a suit related to the death of*  
23 *the victim, from subpoenaing those records after a showing of*  
24 *good cause to the trial court.*

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

27 130. (a) *Notwithstanding any other law, when a child who is*  
28 *under 18 years of age is killed as a result of a criminal act and a*  
29 *person has been convicted and sentenced for the commission of*  
30 *that criminal act, or a person has been found to have committed*  
31 *that offense by the juvenile court and adjudged a ward of the*  
32 *juvenile court, upon the request of a qualifying family member of*  
33 *a deceased child, the autopsy report and evidence associated with*  
34 *the examination of the victim in the possession of a public agency*  
35 *shall be sealed and not disclosed, except as provided in this*  
36 *subdivision.*

37 (1) *Nothing in this section shall prohibit the use of autopsy*  
38 *reports and evidence during criminal court proceedings.*

39 (2) *Disclosure of all autopsy information and evidence to law*  
40 *enforcement, prosecutorial agencies and experts hired by those*

1 agencies, social service agencies, or child death review teams is  
2 not limited by this section.

3 (3) Disclosure to the defendant and the defense team in the  
4 course of criminal proceedings or related habeas proceedings is  
5 not limited by this section, except that the defendant and defense  
6 team are prohibited from disseminating the autopsy report and  
7 evidence outside of the defense team, except during criminal court  
8 proceedings.

9 (4) Civil litigants, in a cause of action related to the victim's  
10 death, may obtain copies of autopsy reports and evidence with a  
11 court order upon a showing of good cause and proper notice under  
12 Section 129, except that the litigants are prohibited from  
13 disseminating the autopsy report and evidence outside of the  
14 litigation team, except during court-related proceedings.

15 (5) Nothing in this section shall abrogate the rights of victims,  
16 their authorized representatives, or insurance carriers to request  
17 the release of information pursuant to subdivision (f) of Section  
18 6254 of the Government Code. However, if a seal has been  
19 requested, an insurance carrier receiving items pursuant to a  
20 request under that subdivision is prohibited from disclosing the  
21 requested items except as necessary in the normal course of  
22 business. An insurance carrier shall not, under any circumstances,  
23 disclose items received pursuant to subdivision (f) of Section 6254  
24 of the Government Code to the general public.

25 (6) This provision may not be invoked by a qualifying family  
26 member who has been charged with or convicted of any act in  
27 furtherance of the victim's death. Upon the filing of charges against  
28 a qualifying family member, any seal maintained at the request of  
29 that qualifying family member shall be removed.

30 (7) A coroner or medical examiner shall not be liable for  
31 damages in a civil action for any act or omission taken in  
32 compliance with this section.

33 (8) If sealing of the autopsy report has been requested by a  
34 qualifying family member and another qualifying family member  
35 opposes sealing, the opposing party may request a hearing in the  
36 superior court in the county with jurisdiction over the crime leading  
37 to the child's death for a determination of whether the sealing  
38 should be maintained. The opposing party shall notify all other  
39 qualifying family members, the medical examiner's office that  
40 conducted the autopsy, and the district attorney's office with

1 jurisdiction over the crime at least 10 court days in advance of the  
2 hearing. At the hearing, the court shall consider the interests of  
3 all qualifying family members, the protection of the memory of the  
4 deceased child, any evidence that the qualifying family member  
5 requesting the seal was involved in the crime that resulted in the  
6 death of the child, the public interest in scrutiny of the autopsy  
7 report or the performance of the medical examiner, and any impact  
8 that unsealing would have on pending investigations or litigation.  
9 Official information in the possession of a public agency necessary  
10 to the determination of the hearing shall be received in camera  
11 upon a proper showing. This section shall not apply where a public  
12 agency has independently sealed the autopsy report as an  
13 investigative file.

14 (9) An aunt, uncle, sibling, first cousin, or grandparent of the  
15 deceased child may request that the seal be removed. The request  
16 to remove the seal shall be adjudicated pursuant to paragraph (8),  
17 with the party requesting the removal of the seal being the opposing  
18 party.

19 (10) If an autopsy report is not sealed or is unsealed after a  
20 hearing conducted pursuant to paragraph 8 or 9, the court may  
21 order that the autopsy report itself may not be televised, published  
22 on the Internet or in print, or displayed in a public manner.

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

29 (12) When a medical examiner declines a request to provide a  
30 copy of an autopsy report pursuant to this section, the examiner  
31 shall cite this section as the reason for declining to provide a copy  
32 of the report.

33 (b) For purposes of this section:

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

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

39 (B) He or she was residing in a state or county juvenile facility,  
40 or a private facility under contract with the state or county for the

1 placement of juveniles, as a ward of the juvenile court pursuant  
2 to Section 602 of the Welfare and Institutions Code at the time of  
3 his or her death.

4 (2) "Defense team" means supervisors, attorneys, investigators,  
5 paralegals, support staff, defendant, and other experts consulted  
6 for the purposes of investigation and defense of the person accused  
7 of killing the deceased child victim.

8 (3) "Evidence" means any object, writing, diagram, recording,  
9 computer file, photograph, video, DVD, CD, film, digital device,  
10 or other item that was collected during, or serves to document,  
11 the autopsy of an individual.

12 (4) "Qualifying family member" means the biological or  
13 adoptive parent, spouse, or legal guardian.

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

18 SEC. 4. If the Commission on State Mandates determines that  
19 this act contains costs mandated by the state, reimbursement to  
20 local agencies and school districts for those costs shall be made  
21 pursuant to Part 7 (commencing with Section 17500) of Division  
22 4 of Title 2 of the Government Code.

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

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

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

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

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

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

6 ~~(3) While criminal proceedings and certain civil actions may~~  
7 ~~require the use of those documents to satisfy the needs of a~~  
8 ~~particular suit, there is no compelling interest in public production~~  
9 ~~and distribution of these documents.~~

10 ~~(4) Both the California and United States Constitutions have~~  
11 ~~been construed to vest privacy rights in the families of deceased~~  
12 ~~victims, prohibiting the unnecessary disclosure of that information.~~

13 ~~(b) The purpose of this act is to protect the privacy of the~~  
14 ~~families of deceased victims by allowing them to request that~~  
15 ~~autopsy reports not be subject to public records act requests.~~

16 ~~(c) This act is intended to limit the unnecessary dissemination~~  
17 ~~of autopsy and private medical information concerning a murdered~~  
18 ~~child by acknowledging a family's right to privacy in those~~  
19 ~~documents when there is no compelling interest in disclosure. This~~  
20 ~~act allows families to request that the autopsy report of the victim~~  
21 ~~be sealed from public inspection. This act does not affect the~~  
22 ~~dissemination of the reports to law enforcement agents or~~  
23 ~~prosecutors, and it does not affect their obligations to provide that~~  
24 ~~information to defendants, with a protective order, in compliance~~  
25 ~~with state and federal discovery obligations. This act does not~~  
26 ~~affect the ability of civil litigants, in a suit related to the death of~~  
27 ~~the victim, from subpoenaing those records after a showing of~~  
28 ~~good cause to the trial court.~~

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

31 ~~130. (a) Notwithstanding any other law, upon the request of~~  
32 ~~the biological, adoptive, or foster parent, spouse, or guardian of a~~  
33 ~~deceased victim of a crime who was under 18 years of age at the~~  
34 ~~time of the crime that caused his or her death, the autopsy report~~  
35 ~~and evidence associated with the examination of the victim shall~~  
36 ~~be sealed and not disclosed, except as provided in this subdivision.~~

37 ~~(1) Nothing in this section shall prohibit the use of autopsy~~  
38 ~~reports and evidence during criminal court proceedings.~~

1     ~~(2) Disclosure of all autopsy information and evidence to law~~  
2 ~~enforcement, prosecutorial agencies, or child death review teams~~  
3 ~~is not limited by this section.~~

4     ~~(3) Disclosure to the defendant and the defense team in the~~  
5 ~~course of criminal proceedings or related habeas proceedings is~~  
6 ~~not limited by this section, except that the defendant and defense~~  
7 ~~team are prohibited from disseminating all autopsy information~~  
8 ~~and evidence outside of the defense team, except during criminal~~  
9 ~~court proceedings.~~

10     ~~(4) Civil litigants, in a cause of action related to the victim's~~  
11 ~~death, may obtain copies of autopsy reports and evidence with a~~  
12 ~~court order upon a showing of good cause and proper notice under~~  
13 ~~Section 129.~~

14     ~~(5) Nothing in this section shall abrogate the rights of victims,~~  
15 ~~their authorized representatives, or insurance carriers to request~~  
16 ~~the release of information pursuant to subdivision (f) of Section~~  
17 ~~6254 of the Government Code. However, if a seal has been~~  
18 ~~requested, an insurance carrier receiving items pursuant to a request~~  
19 ~~under that subdivision is prohibited from disclosing the requested~~  
20 ~~items except as necessary in the normal course of business. An~~  
21 ~~insurance carrier shall not, under any circumstances, disclose items~~  
22 ~~received pursuant to subdivision (f) of Section 6254 of the~~  
23 ~~Government Code to the general public.~~

24     ~~(6) This provision may not be invoked by a family member who~~  
25 ~~has been charged with or convicted of any act in furtherance of~~  
26 ~~the victim's death.~~

27     ~~(7) A coroner or medical examiner shall not be liable for~~  
28 ~~damages in a civil action for any act or omission taken in~~  
29 ~~compliance with this section.~~

30     ~~(b) For purposes of this section, "evidence" means any object,~~  
31 ~~writing, diagram, recording, computer file, photograph, video,~~  
32 ~~DVD, CD, film, digital device, or other item which was collected~~  
33 ~~during or serves to document the autopsy of an individual.~~

34     ~~SEC. 4. If the Commission on State Mandates determines that~~  
35 ~~this act contains costs mandated by the state, reimbursement to~~  
36 ~~local agencies and school districts for those costs shall be made~~  
37 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
38 ~~4 of Title 2 of the Government Code.~~

39     ~~SEC. 5. This act is an urgency statute necessary for the~~  
40 ~~immediate preservation of the public peace, health, or safety within~~

1 ~~the meaning of Article IV of the Constitution and shall go into~~  
2 ~~immediate effect. The facts constituting the necessity are:~~  
3 ~~In order to prevent, as soon as possible, autopsy information~~  
4 ~~concerning deceased children from being made available to the~~  
5 ~~public, it is necessary that this act take effect immediately.~~

O