

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)
(~~Coauthor: Senator Ducheny~~)
(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.

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, upon the request of the family 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, the disclosure of the autopsy report and evidence associated with the examination of the victim, 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 before
10 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 (3) While criminal proceedings and certain civil actions may
17 require the use of those documents to satisfy the needs of a
18 particular suit, there is no compelling interest in public production
19 and distribution of these documents.

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

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

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

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

130. (a) Notwithstanding any other law, upon the request of the family of a deceased victim of a crime who was under 18 years of age at the time of the crime that caused his or her death, the autopsy report and evidence associated with the examination of the victim shall be sealed and not disclosed, except as provided in this subdivision.

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

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

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

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

(5) 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 items received pursuant to subdivision (f) of Section 6254 of the Government Code to the general public.

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

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

(b) For purposes of this section:

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

(2) "Family" means the biological or adoptive parent, foster parent, spouse, registered domestic partner, child, sibling, or closest living relative of the deceased.

SEC. 4. 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. 5. 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.