

AMENDED IN SENATE AUGUST 3, 2010

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 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 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 exemption from the Public Records Act described above 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.

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

19 (b) The purpose of this act is to protect the privacy of the
20 families of deceased ~~victims~~ *minor victims of violent crimes* by
21 allowing them to request that autopsy reports not be subject to
22 public records act requests.

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

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

130. (a) ~~Notwithstanding any other law~~ *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 ~~a~~ *the* deceased child, the autopsy report and evidence associated with the examination of the victim in the possession of a public agency 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 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, or child death review teams is not limited by this section. to be used solely for investigative, prosecutorial, or review purposes, and may not be disseminated further.~~

~~(3) Disclosure to~~

~~(2) To the defendant and the defense team and experts hired by 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 the autopsy report and evidence outside of the defense team, except during criminal court proceedings.~~

~~(4) Civil to be used solely for investigative and review purposes and may not be disseminated further.~~

~~(3) To civil litigants, in a cause of action related to the victim's death, may obtain copies of autopsy reports and evidence with a death with a court order upon a showing of good cause and proper notice under Section 129, except that the litigants are prohibited from disseminating the autopsy report and evidence outside of the litigation team, except during court-related proceedings.~~

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

~~(6) This provision~~

(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.

~~(7)~~

(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.

~~(8)~~

(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, ~~and~~ any impact that unsealing would have on pending investigations or *pending*

1 litigation, and any other relevant factors. Official information in
2 the possession of a public agency necessary to the determination
3 of the hearing shall be received in camera upon a proper showing.
4 ~~This section shall not apply where a public agency has~~
5 ~~independently sealed the autopsy report as an investigative file.~~

6 ~~(9) An~~ In its discretion, the court may, to the extent allowable
7 by law and with good cause shown, restrict the dissemination of
8 an autopsy report or evidence associated with the examination of
9 a victim. This section shall not apply if a public agency has
10 independently determined that the autopsy report may not be
11 disclosed pursuant to subdivision (f) of Section 6254 of the
12 Government Code because it is an investigative file. In that
13 instance, nothing in this section shall preclude the application of
14 Sections 6258 and 6259 of the Government Code.

15 (g) If a seal has been maintained pursuant to this section, a
16 qualifying family member, or a biological or adoptive aunt, uncle,
17 sibling, first cousin, child, or grandparent of the deceased child
18 may request that the seal be removed. The request to remove the
19 seal shall be adjudicated pursuant to ~~paragraph (8)~~ subdivision (f),
20 with the party requesting the removal of the seal being the opposing
21 party.

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

26 ~~(11)~~

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

33 ~~(12)~~

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

38 ~~(b)~~

39 (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.

(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) “Defense team” means supervisors, attorneys, investigators, paralegals, support staff, defendant, and other experts consulted for the purposes of investigation and defense of the person accused of killing the deceased child victim.~~

~~(3) “Evidence”~~

~~(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 an individual a deceased child.~~

~~(4)~~

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

~~(e)~~

~~(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. 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

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

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

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

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