

REVISE LAWS PERTAINING TO THE DISCLOSURE AND RELEASE OF AUTOPSY INFORMATION COMPILED OR PREPARED BY THE OFFICE OF THE CHIEF MEDICAL EXAMINER

SECTION 2.(a) G.S. 130A-385 reads as rewritten:

"§ 130A-385. Duties of medical examiner upon receipt of notice; reports; copies.

...

(d) Upon request by the district attorney, the Office of the Chief Medical Examiner, the local medical examiner, and the autopsy center, as applicable, shall provide a complete copy of the medical examiner investigation file to the appropriate district attorney. For purposes of this subsection, the "medical examiner investigation file" means the finalized toxicology report, the finalized autopsy report, any autopsy examination notes, any death scene notes, the finalized report of investigation of a medical examiner, the case encounter form, any case comments, any case notes, any autopsy photographs, any scene photographs, and any video or audio recordings of the autopsy examination in the custody and control of the North Carolina Office of the Chief Medical Examiner, a pathologist designated by the Chief Medical Examiner, a county medical examiner appointed under G.S. 130A-382, ~~or an investigating medical examiner-examiner, or an autopsy center~~ in connection with a death under criminal investigation by a public law enforcement agency. Each records custodian ~~shall be~~ is responsible for providing the portions of the medical examiner investigation file within its custody and control. This is a continuing disclosure obligation, and ~~each records custodian shall provide to the district attorney any records or other materials responsive to the district attorney's request that are discovered or added to the medical examiner investigation file after the request was made shall also be provided to the district attorney.~~ has been made. The district attorney or investigating law enforcement agency shall inform the Chief Medical Examiner, ~~the county medical examiner, or the autopsy center,~~ Examiner, the county medical examiner appointed under G.S. 130A-382, the investigating medical examiner, and the autopsy center, as applicable, ~~if when~~ the death is no longer under criminal investigation and the ~~continuing disclosure obligation is~~ has terminated.

(d1) Upon notice from the investigating public law enforcement agency or prosecuting district attorney that a death is under criminal investigation or the subject of a criminal prosecution, any records, worksheets, reports, photographs, tests, or analyses compiled, prepared, or conducted by the Office of the Chief Medical Examiner, a pathologist designated by the Chief Medical Examiner, a county medical examiner appointed under G.S. 130A-382, an investigating medical examiner, or an autopsy center, including any autopsy photographs or video or audio recordings, related to that death shall be treated as records of criminal investigations pursuant to G.S. 132-1.4. Autopsy photographs or video or audio records subject to the provisions of this subsection may only be disclosed or released pursuant to G.S. 130A-389.1. These records may only be disclosed or released as follows and recipients of records pursuant to the following subdivisions may not disclose the identified records to the public unless otherwise authorized by law:

- (1) The custodian of the finalized toxicology report, finalized autopsy report, or finalized report of investigation of a medical examiner may release a copy at a time and location determined by the custodial agency (i) to a personal representative of the decedent's estate to enable the personal representative to fulfill his or her duties under the law, (ii) to a beneficiary of a benefit or claim associated with the decedent for purposes of receiving the benefit or resolving the claim, or (iii) to the decedent's spouse, child or stepchild, parent or stepparent, sibling, or legal guardian.
- (2) The Office of the Chief Medical Examiner, a pathologist designated by the Chief Medical Examiner, a county medical examiner appointed under G.S. 130A-382, an investigating medical examiner, or an autopsy center is not prohibited from disclosing or releasing information or reports when necessary

to conduct a thorough and complete death investigation, to consult with outside physicians and other professionals during the death investigation, and to conduct necessary toxicological screenings.

- (3) When disclosing information to the investigating public law enforcement agency or prosecuting district attorney.
- (4) When disclosing or releasing information or reports is necessary (i) to address public health or safety concerns, (ii) for public health purposes, including public health surveillance, investigations, interventions, and evaluations, (iii) to facilitate research, (iv) to facilitate education, (v) to release decedent remains to transporters, funeral homes, family members, or others for final disposition, (vi) to comply with reporting requirements under State or federal law or in connection with State or federal grants, or (vii) to comply with any other duties imposed by law.

(d2) Records and materials subject to the provisions of subsection (d1) of this section shall continue to be records of criminal investigations pursuant to G.S. 132-1.4 until the Office of the Chief Medical Examiner, county medical examiner, or autopsy center that is custodian of the records (i) receives notification from the investigating public law enforcement agency or the prosecuting district attorney of the conclusion of the criminal investigation or prosecution or the decision to terminate the criminal investigation of the death or (ii) receives notification from the prosecuting district attorney that some portion of the records or materials have been introduced as evidence in a public trial. The notification required by this section shall be made on a form created by the Administrative Office of the Courts and completed by either the investigating public law enforcement agency or the prosecuting district attorney. The Chief Medical Examiner, county medical examiner, or autopsy center may rely on a completed notification form conveyed by a third party. The Office of the Chief Medical Examiner and its staff, the county medical examiner, and the autopsy center and its staff shall have no criminal or civil liability for relying on a notice provided pursuant to this subsection.

(d3) Except as provided in subsection (d4) of this section, any records, worksheets, reports, photographs, tests, or analyses compiled, prepared, or conducted by the Office of the Chief Medical Examiner, a pathologist designated by the Chief Medical Examiner, a county medical examiner appointed under G.S. 130A-382, an investigating medical examiner, or an autopsy center in connection with the death of a child who was under 18 years of age at the time of death, including any autopsy photographs or video or audio recordings, are confidential and may be disclosed or released only with the prior written consent of the deceased child's parent or guardian or as follows:

- (1) The custodian of the finalized autopsy report, finalized toxicology report, or finalized report of investigation of a medical examiner may release a copy at a time and location determined by the custodial agency to (i) a personal representative of the decedent's estate to enable the personal representative to fulfill his or her duties under the law or (ii) a beneficiary of a benefit or claim associated with the decedent for purposes of receiving the benefit or resolving the claim.
- (2) The Office of the Chief Medical Examiner, a pathologist designated by the Chief Medical Examiner, a county medical examiner appointed under G.S. 130A-382, an investigating medical examiner, or an autopsy center is not prohibited from disclosing or releasing information or reports when necessary to conduct a thorough and complete death investigation, to consult with outside physicians and other professionals during the death investigation, and to conduct necessary toxicology screenings.
- (3) When disclosing or releasing information or reports is necessary (i) to address public health or safety concerns, (ii) for public health purposes, including

public health surveillance, investigations, interventions, and evaluations, (iii) to facilitate research, (iv) to facilitate education, (v) to release decedent remains to transporters, funeral homes, family members, or others for final disposition, (vi) to comply with reporting requirements under State or federal law or in connection with State or federal grants, or (vii) to comply with any other duties imposed by law.

- (4) The custodian of the finalized autopsy report, finalized toxicology report, finalized report of investigation of a medical examiner, and any related documents shall, upon request, release copies of the report and those documents to the surviving spouse of the deceased, the deceased's parents, any adult children of the deceased, any legal guardian or custodian of the deceased, any legal guardian or custodian of a child of the deceased, or any person holding power of attorney or healthcare attorney for the deceased.
- (5) The legal representatives of any person authorized to receive records under this section.

Notwithstanding the provisions of this subsection, any materials that are subject to the provisions of subsection (d1) of this section may only be disclosed pursuant to that subsection while the death is under criminal investigation by a public law enforcement agency or during the pendency of criminal charges associated with a death.

(d4) When any records or materials are subject to the provisions of both subsections (d1) and (d3) of this section, the records and materials shall not be disclosed or released except as authorized by subsection (d1) of this section until the Office of the Chief Medical Examiner, county medical examiner, or autopsy center that is custodian of the records or materials has received notification of the conclusion of the criminal investigation or prosecution, the decision to terminate the criminal investigation of the death, or that some portion of the records or materials have been introduced as evidence in a public trial pursuant to subsection (d2) of this section.

(d5) Any person who willfully and knowingly discloses or releases records or materials in violation of subsection (d1) or (d3) of this section, or who willfully and knowingly possesses or disseminates records or materials that were disclosed or released in violation of subsection (d1) or (d3) of this section, is guilty of a Class 1 misdemeanor; provided, however, that more than one occurrence of disclosure, release, possession, or dissemination of the same item by the same person is not a separate offense. No person shall be guilty of a Class 1 misdemeanor under this subsection for disclosing, releasing, possessing, or disseminating records or materials if, at the time of the disclosure, release, possession, or dissemination, notice that the record or material is record of a criminal investigation had not been provided as required by subsection (d1) of this section. A person who discloses or releases information pursuant to subsection (d3) of this section in reliance on the written consent of an individual who represents to be the child's parent or guardian and who acts in good faith without actual knowledge that the representation is false will not be subject to civil or criminal liability. As used in this subsection, the term "disclose" means the act of making records or materials available for viewing or listening by a person or entity upon request, at a time and location chosen by the custodial agency, and the term "release" means the act of the custodial agency in providing a copy of records or materials.

(d6) Any other person or entity seeking disclosure or release of records or materials covered under subsection (d1) or (d3) of this section may commence a special proceeding in the superior court of the county where the death that is the subject of the records or materials occurred to obtain a court order for disclosure or release of the records or materials. The court may conduct an in-camera review of the records or materials. Upon a showing of good cause, a superior court judge may issue an order authorizing the disclosure or release of the records or materials and may prescribe any restrictions or stipulations that the superior court judge deems appropriate. The petitioner shall provide reasonable notice of the commencement of the special proceeding

and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided, in writing, to all of the following:

- (1) The Office of the Chief Medical Examiner.
- (2) The district attorney of the county in which the death occurred.
- (3) The personal representative of the estate of the deceased, if any.
- (4) If the record or material is subject to the provisions of subsection (d1) of this section, the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.
- (5) If the record or material is subject to the provisions of subsection (d2) of this section, to the deceased child's parents or guardian.

In determining good cause, the judge shall consider whether the disclosure or release is necessary for the public evaluation of governmental performance, the seriousness of the intrusion into the family's right to privacy, whether the requested disclosure or release is the least intrusive means available, the need to withhold the records to facilitate the investigation or prosecution of criminal offenses, the rights of the defendant in any ongoing criminal investigation or prosecution, the public interest in having access to the records or materials, and the availability of similar information in other public records, regardless of form. A party aggrieved by an order of the superior court authorized by this subsection may appeal in accordance with Article 27 of Chapter 1 of the General Statutes.

(d7) Any person or entity seeking disclosure or release of records or materials covered under subsection (d1) or (d3) of this section who is alleging that the criminal investigation or prosecution has concluded or been terminated, or that portions of the records or material have been introduced as evidence in a public trial, but that the investigating public law enforcement agency or prosecuting district attorney will not comply with the notification required pursuant to subsection (d2) of this section may commence a special proceeding in the superior court of the county where the death that is the subject of the records or materials occurred for an order compelling disclosure or release of the records or materials.

In any action brought pursuant to this section in which a party successfully compels the disclosure of records or materials, the court shall allow a party seeking disclosure of records or materials who substantially prevails to recover its reasonable attorneys' fees if attributed to those records or materials. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

- (1) A judgment or an order of a court applicable to the governmental unit or governmental body.
- (2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.
- (3) A written opinion, decision, or letter of the Attorney General.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorneys' fee against the person or persons instituting the action and award it to the public agency as part of the costs.

(e) In cases where death occurred due to an injury received in the course of the decedent's employment, the Chief Medical Examiner shall forward to the Commissioner of Labor a copy of the medical examiner's report of the investigation, including the location of the fatal injury and the name and address of the decedent's employer at the time of the fatal injury. The Chief Medical Examiner shall forward this report within 30 days of receipt of the information from the medical examiner. Upon written request by the Commissioner of Labor, the Chief Medical Examiner shall provide the finalized autopsy report within five months of the date of the request.

(f) If a death occurred in a facility licensed subject to Article 2 or Article 3 of Chapter 122C of the General Statutes, or Articles 1 or 1A of Chapter 131D of the General Statutes, and the deceased was a client or resident of the facility or a recipient of facility services at the time of death, then the Chief Medical Examiner shall forward a copy of the medical examiner's report to the Secretary of Health and Human Services within 30 days ~~of~~ after receipt of the report from the medical examiner."

SECTION 2.(b) G.S. 130A-389(a) reads as rewritten:

"(a) The Chief Medical Examiner or a competent pathologist designated by the Chief Medical Examiner shall perform an autopsy or other study in each of the following cases:

- (1) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made.
- (2) If an autopsy or other study is requested by the district attorney of the county or by any superior court judge.
- (3) Notwithstanding subdivision (2) of this subsection, in any case in which the district attorney of the county asserts to the Chief Medical Examiner or the medical examiner of the county in which the body was located that there is probable cause to believe that a violation of G.S. 14-18.4 has occurred, a complete autopsy shall be performed. The district attorney has at least 72 weekday hours after pronouncement of death by a person authorized under this Part to express the opinion that death has occurred to make the assertion required by this subdivision, provided that the district attorney or the investigating law enforcement agency provides notification within the first 24 hours after the pronouncement that such an assertion might be made. The district attorney may, but is not required to, assert to the Chief Medical Examiner the facts supporting probable cause to believe that a violation of G.S. 14-18.4 has occurred.

A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to any person upon ~~request~~ request unless the report is protected from disclosure or release under subsection (d1) or (d3) of G.S. 130A-385."

SECTION 2.(c) G.S. 130A-389.1 reads as rewritten:

"§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.

(a) Except as otherwise provided by ~~law~~, law and excluding (i) any records or materials treated as records of criminal investigations under G.S. 130A-385(d1) and (ii) any confidential materials in connection with the death of a child who was under 18 years of age at the time of death that a parent or guardian elects to protect from disclosure or release under G.S. 130A-385(d3). any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise

provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public. For purposes of this section, the Chief Medical Examiner shall be the custodian of all autopsy photographs or video or audio recordings unless the photographs or recordings were taken by or at the direction of an investigating medical examiner and the investigating medical examiner retains the original photographs or recordings. If Except in cases in which the records or materials are protected from disclosure or release under subsection (d1) or (d3) of G.S. 130A-385, if the investigating medical examiner has retained the original photographs or recordings, then the investigating medical examiner is the custodian of the photographs or video or audio recordings and ~~must~~ shall allow the public to inspect and examine them in accordance with this subsection.

...

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes. This subsection does not apply to autopsy photographs or video or audio recordings that are (i) treated as records of criminal investigations under G.S. 130A-385(d1), which may be disclosed or released to other persons or entities only in accordance with G.S. 130A-385(d2) or (d6), or (ii) of a deceased child that was under 18 years of age at the time of death that a parent or guardian elects to protect from disclosure or release under G.S. 130A-385(d3), which may be disclosed or released to other persons or entities only with the prior consent of the deceased child's parent or guardian, or in accordance with G.S. 130A-385(d6).

...."

SECTION 2.(d) G.S. 132-1.8 reads as rewritten:

"§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the ~~public~~ public, unless the report is protected from disclosure or release under subsection (d1) or (d3) of G.S. 130A-385. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2.(e) This section becomes effective October 1, 2025.