

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 331

Short Title: Family Protection Act. (Public)

Sponsors: Senators Allran; Brock, Carpenter, Forrester, Foxx, Garwood, Horton, Shubert, Sloan, Smith, Stevens, Tillman, and Weinstein.

Referred to: Judiciary II.

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT FAMILIES BY PROVIDING THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT A PUBLIC RECORD.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 132 of the General Statutes is amended by adding the following new section to read:

**"§ 132-1.5A. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Findings. – The General Assembly finds the following:

(1) Photographs or video or audio recordings of an autopsy show or describe the deceased in a graphic and often disturbing fashion. The photographs or video or audio recordings may depict the deceased nude, bruised, bloodied, broken, with bullet or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings of an autopsy are highly sensitive depictions of the deceased which, if copied and publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased.

(2) The existence of the World Wide Web and the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of photographs and video or audio recordings 24 hours a day and that widespread dissemination of autopsy photographs and video or audio recordings would subject the immediate family of the deceased to continuous injury.

(3) There are other types of information available, such as the text of the autopsy report, which are less intrusive and injurious to the immediate

1 family members of the deceased but which provide for public  
2 oversight.

3 (4) Given the likelihood of injury to immediate family members by the  
4 dissemination of autopsy photographs and video or audio recordings  
5 and the availability of less intrusive means of providing public  
6 oversight, it is a public necessity to provide by law that photographs  
7 and video or audio recordings of an autopsy are not a public record  
8 under G.S. 132-1.

9 (b) Access Restricted. – Except as otherwise provided in this subsection, a  
10 photograph or video or audio recording of an autopsy is not a public record as defined  
11 by G.S. 132-1. The custodian of a photograph or video or audio recording of an autopsy  
12 shall grant access to the photograph or video or audio recording to the following:

13 (1) Chief Medical Examiner.

14 (2) Authorizing medical examiner.

15 (3) District attorney.

16 (4) Superior court judge.

17 (5) An individual entitled to bring a wrongful death action on behalf of the  
18 deceased under G.S. 28A-18-2.

19 (6) The surviving spouse of the deceased may view and copy a photograph  
20 or video or listen to or copy an audio recording of the deceased  
21 spouse's autopsy. If there is no surviving spouse, then the surviving  
22 parents of the deceased may have access to the photograph or video or  
23 audio recording of the autopsy. If there are no surviving parents, then  
24 an adult child of the deceased may have access to the photograph or  
25 video or audio recording of the autopsy.

26 (7) Law enforcement officials conducting an investigation of the death. A  
27 law enforcement official may provide a copy of the photograph or  
28 videotape to the media for the purpose of aiding in the identification of  
29 the deceased through publication of the photograph or videotape.

30 (8) A local government entity, or a State or federal agency, in furtherance  
31 of its official duties, pursuant to a written request, may view or copy a  
32 photograph or video or may listen to or copy an audio recording of an  
33 autopsy, and unless otherwise required in the performance of their  
34 duties, the identity of the deceased shall remain confidential.

35 (9) A person authorized by the court pursuant to subsection (c) of this  
36 section.

37 (10) The guardian or custodian of a minor child of the deceased.

38 (11) After redacting all information identifying the decedent, including  
39 name, address, and Social Security number, and after anonymizing  
40 facial recognition, a medical examiner, coroner, or physician who uses  
41 such material for;

42 a. Medical or scientific teaching or training purposes;

43 b. Teaching or training of law enforcement personnel;

- 1           c.     Teaching or training of attorneys or others with a bona fide  
2                 professional need to use or understand forensic science;  
3           d.     Conferring with medical or scientific experts in the field of  
4                 forensic science; or  
5           e.     Publication in a scientific or medical journal or textbook.  
6                 A medical examiner, coroner, or physician who has in good  
7                 faith complied with this subsection shall not be subject to any  
8                 penalty under this section.

9           (c)    Court Order. – A person who is denied access to photographs or video or  
10           audio recordings under this section may apply to the appropriate division of the General  
11           Court of Justice for an order. The court, upon a showing of good cause, may issue an  
12           order authorizing the person to view or copy a photograph or video recording of an  
13           autopsy or to listen to or copy an audio recording of an autopsy and may prescribe any  
14           restrictions or stipulations that the court deems appropriate. In determining good cause,  
15           the court shall consider whether the disclosure is necessary for the public evaluation of  
16           governmental performance; the seriousness of the intrusion into the family's right to  
17           privacy and whether the disclosure is the least intrusive means available; and the  
18           availability of similar information in other public records, regardless of form. In all  
19           cases, the viewing, copying, listening to, or other handling of a photograph or video or  
20           audio recording of an autopsy shall be under the direct supervision of the custodian of  
21           the record or the custodian's designee.

22           (d)    Notice of Petition. – The petitioner shall provide reasonable notice of a  
23           petition filed with the court to view or copy a photograph or video recording of an  
24           autopsy or a petition to listen to or copy an audio recording of an autopsy, a copy of the  
25           petition, and reasonable notice of the opportunity to be present and heard at any hearing  
26           on the matter. The notice shall be provided to a surviving spouse of the deceased. If  
27           there is no surviving spouse, then the notice shall be provided to the deceased's parents,  
28           and if the deceased has no living parent, then to the adult child of the deceased or to the  
29           guardian or custodian of a minor child of the deceased.

30           (e)    Criminal and Administrative Proceedings. – This section does not apply to a  
31           criminal or administrative proceeding except that nothing in this section prohibits a  
32           court or administrative proceeding, upon good cause shown, from restricting or  
33           otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or  
34           video or audio recordings in the manner provided under this section.

35           (f)    Penalties. – Any person who provides one or more photographs or video or  
36           audio recordings in violation of this section is guilty of a Class H felony. Any person  
37           who willfully and knowingly violates a court order issued pursuant to this section is  
38           guilty of a Class H felony."

39           **SECTION 2.** G.S. 130A-389 reads as rewritten:

40           "**§ 130A-389. Autopsies.**

41           (a)    If, in the opinion of the medical examiner investigating the case or of the  
42           Chief Medical Examiner, it is advisable and in the public interest that an autopsy or  
43           other study be made; or, if an autopsy or other study is requested by the district attorney  
44           of the county or by any superior court judge, an autopsy or other study shall be made by

1 the Chief Medical Examiner or by a competent pathologist designated by the Chief  
2 Medical Examiner. A complete autopsy report of findings and interpretations, prepared  
3 on forms designated for the purpose, shall be submitted promptly to the Chief Medical  
4 Examiner. Copies of the report shall be furnished the authorizing medical examiner,  
5 district attorney or superior court judge. ~~A~~ Subject to the limitations of G.S. 132-1.5A, a  
6 copy of the report shall be furnished to other persons upon request. A fee for the  
7 autopsy or other study shall be paid by the State. However, if the deceased is a resident  
8 of the county in which the death or fatal injury occurred, that county shall pay the fee.  
9 The fee shall be one thousand dollars (\$1,000).

10 (b) In deaths where the Chief Medical Examiner and the medical examiner  
11 investigating the case do not deem it advisable and in the public interest that an autopsy  
12 be performed, but the next-of-kin of the deceased requests that an autopsy be  
13 performed, the Chief Medical Examiner or a designated pathologist may perform the  
14 autopsy and the cost shall be paid by the next-of-kin.

15 (c) When the next-of-kin of a decedent whose death does not fall under G.S.  
16 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical  
17 Examiner or a designated pathologist may perform that autopsy and the cost shall be  
18 paid by the next-of-kin.

19 (d) The report of autopsies performed pursuant to subsections (b) and (c) shall be  
20 a part of the decedents' medical records and therefore not public records open to  
21 inspection."

22 **SECTION 3.** This act is effective when it becomes law and applies to all  
23 photographs or video or audio recordings of an autopsy regardless of whether the  
24 autopsy was performed before or after the effective date of this act.