

CHAPTER 78

(HB 67)

AN ACT relating to autopsy records.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 72 IS CREATED TO READ AS FOLLOWS:

- (1) *No autopsy photograph, other visual image in whatever form, video recording, or audio recording shall be open to the public unless the spouse or personal representative of the decedent provides an express waiver to the state medical examiner, coroner, or other public official in lawful possession of those materials to make those materials public. However, the office of the state medical examiner, a coroner, or other public official in lawful possession of an autopsy photograph, other visual image in whatever form, video recording, or audio recording shall make an autopsy photograph, other visual image in whatever form, video recording, or audio recording available to:*
- (a) *The spouse, children, and surviving parents, and the personal representative of the decedent;*
 - (b) *A law enforcement agency, any agency or panel required by statute to conduct fatality reviews, county attorney, Commonwealth's attorney, public health officer, or coroner having a bona fide interest in the case;*
 - (c) *1. A beneficiary under an insurance policy, for the purpose of processing a claim related to the decedent's death; or*
2. An insurance company, with the written permission of the decedent's spouse or personal representative, for the purpose of processing a claim related to the decedent's death;
 - (d) *An attorney or an attorney's agents in a matter arising out of the decedent's death;*
 - (e) *A defendant in any criminal case arising out of the decedent's death if the defendant is proceeding pro se in the case;*
 - (f) *A physician or other medical professional licensed by the Commonwealth or another state or territory under the jurisdiction of the United States for the purposes of teaching or for publication in a scientific journal or textbook;*
 - (g) *A certified law enforcement instructor for the purpose of using the autopsy photograph, other visual image in whatever form, video recording, or audio recording in bona fide law enforcement training;*
 - (h) *A county attorney, Commonwealth's attorney, public health officer, or coroner for the purpose of using the autopsy photograph, other visual image in whatever form, video recording, or audio recording in bona fide training;*
 - (i) *A licensed attorney for the purpose of using the autopsy photograph, other visual image in whatever form, video recording, or audio recording in a Kentucky continuing legal education program; and*
 - (j) *A person disseminating the image as part of an informative, expressive, or artistic work, whether analog or digital, that is:*
 - 1. Part of a play, book, magazine, newspaper, audiovisual work, or cable, broadcast, or satellite television program; or*
 - 2. Part of a work of art, including but not limited to news or commentary;*
- after a court with jurisdiction as provided in subsection (8)(a) of this section, in a proceeding including parties entitled to notice under subsection (8)(b) of this section, has determined that the autopsy photograph, other visual image in whatever form, video recording, or audio recording is newsworthy or pertains to a matter of public concern or public interest.*
- (2) (a) *Except as provided in paragraph (b) of this subsection, no medical examiner, coroner, or other public official in lawful possession of an autopsy photograph, other visual image in whatever form, video recording, or audio recording shall knowingly release those materials to any person not specifically authorized in subsection (1) of this section.*

- (b) *A medical examiner, coroner, or other public official in lawful possession of an autopsy photograph, other visual image in whatever form, video recording, or audio recording may publish such material in a scientific journal or textbook, or use such material for bona fide teaching or training after:*
1. *Redacting the decedent's name, address, and Social Security number; and*
 2. *Obscuring any distinguishing physical features which would allow a viewer to identify the decedent, including but not limited to the decedent's face or any tattoos.*
- (3) *No autopsy photograph, other visual image in whatever form, video recording, or audio recording supplied by the state medical examiner, coroner, or other public official in lawful possession of those materials pursuant to subsection (1)(b) to (j) of this section shall be used for any purpose not specifically described therein.*
- (4) *When the purpose for the use of an autopsy photograph, other visual image in whatever form, video recording, or audio recording has been achieved, the material shall be destroyed by the person to whom it was made available under this section.*
- (5) *When the state medical examiner, coroner, or other public official in lawful possession of an autopsy photograph, other visual image in whatever form, video recording, or audio recording makes the materials available under subsection (1)(f) to (j) of this section:*
1. *The name, address, and Social Security number of the decedent shall be redacted; and*
 2. *Any distinguishing physical features which would allow a viewer to identify the decedent, including but not limited to the decedent's face or any tattoos, shall be obscured.*
- (6) *Any person seeking any autopsy photograph, other visual image in whatever form, video recording, or audio recording pursuant to this Section shall pay any fee allowed under KRS 72.260 for the requested items.*
- (7) *The provisions of this section shall not be construed to contravene or limit the production of records pursuant to the Rules of Civil Procedure or the Rules of Criminal Procedure.*
- (8) (a) *The Circuit Court of the county where the decedent resided or, if the decedent was not a resident of the Commonwealth, in which an autopsy photograph, other visual image in whatever form, video recording, or audio recording is located may, upon a showing of good cause, issue an order authorizing any person to view or copy a photograph, other visual image in whatever form, video recording, or audio recording of an autopsy or to listen to or copy an audio recording of an autopsy, and may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court shall consider whether this disclosure is necessary for the public evaluation of governmental performance, 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, other visual image in whatever form, video recording, or audio recording of an autopsy shall be under the direct supervision of the custodian of the record or of the custodian's designee.*
- (b) 1. *The spouse or personal representative of the decedent shall be given:*
- a. *Reasonable notice of a petition filed with the court to view or copy a photograph, other visual image in whatever form, video recording, or audio recording of an autopsy or a petition to listen to or copy an audio recording;*
 - b. *A copy of the petition; and*
 - c. *Reasonable notice of the opportunity to be present and heard at any hearing on the matter.*
2. *If there is no surviving spouse or personal representative, then the notice shall be given to the deceased's adult children or, if the deceased has no adult children, to the surviving parents of the deceased, and, if there is no individual to represent the estate of the decedent, then the court shall proceed to schedule a hearing without giving such notice.*

➔Section 2. KRS 72.992 is amended to read as follows:

- (1) Any person who violates KRS 72.020(1) or who interferes with the coroner in the lawful performance of his duties shall be fined not less than two hundred fifty dollars (\$250), or be confined in jail for not more than ninety (90) days, or both.
- (2) Any coroner or deputy coroner who violates KRS 72.025 or 72.020 shall be guilty of willful neglect of official duties and shall be fined no more than one thousand dollars (\$1,000) or forfeiture of office or both.
- (3) Any law enforcement officer who violates KRS 72.020 shall be guilty of willful neglect of official duties and shall be fined no more than one thousand dollars (\$1,000) or forfeiture of office or both.
- (4)
 - (a)
 1. *Except as provided in subparagraph 2. of this paragraph, any violation of Section 1 of this Act by an individual other than the surviving spouse, children, parents, or personal representative of the decedent shall result in a fine of not more than five hundred dollars (\$500) for the first violation and not more than one thousand dollars (\$1,000) for each subsequent violation.*
 2. *Any violation of subsection (3) of Section 1 of this Act shall result in a fine which equals the greater of the appropriate fine provided for in subparagraph 1. of this paragraph or three (3) times any profits derived from violating subsection (3) of Section 1 of this Act.*
 - (b) *Any fine collected under paragraph (a) of this subsection shall be paid into the crime victims' compensation fund created under KRS 346.185.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 72 IS CREATED TO READ AS FOLLOWS:

Sections 1 and 2 of this Act may be cited as Jack's Law.

➔Section 4. This Act is not meant to alter or change in any way the current law in the Commonwealth relating to the availability of autopsy records that are not otherwise specifically provided for in this Act.

Signed by Governor March 21, 2017.