

1 AN ACT relating to autopsy records.

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

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

5 *(1) No autopsy photograph, other visual image in whatever form, video recording, or*  
6 *audio recording shall be open to the public unless the spouse or personal*  
7 *representative of the decedent provides an express waiver to the state medical*  
8 *examiner, coroner, or other public official in lawful possession of those materials*  
9 *to make those materials public. However, the office of the state medical*  
10 *examiner, a coroner, or other public official in lawful possession of an autopsy*  
11 *photograph, other visual image in whatever form, video recording, or audio*  
12 *recording shall make an autopsy photograph, other visual image in whatever*  
13 *form, video recording, or audio recording available to:*

14 *(a) The spouse, children, and surviving parents, and the personal*  
15 *representative of the decedent;*

16 *(b) A law enforcement agency, any agency or panel required by statute to*  
17 *conduct fatality reviews, county attorney, Commonwealth's attorney, public*  
18 *health officer, or coroner having a bona fide interest in the case;*

19 *(c) 1. A beneficiary under an insurance policy, for the purpose of processing*  
20 *a claim related to the decedent's death; or*

21 *2. An insurance company, with the written permission of the decedent's*  
22 *spouse or personal representative, for the purpose of processing a*  
23 *claim related to the decedent's death;*

24 *(d) An attorney or an attorney's agents in a matter arising out of the decedent's*  
25 *death;*

26 *(e) A defendant in any criminal case arising out of the decedent's death if the*  
27 *defendant is proceeding pro se in the case;*

- 1        (f) A physician or other medical professional licensed by the Commonwealth  
2        or another state or territory under the jurisdiction of the United States for  
3        the purposes of teaching or for publication in a scientific journal or  
4        textbook;
- 5        (g) A certified law enforcement instructor for the purpose of using the autopsy  
6        photograph, other visual image in whatever form, video recording, or audio  
7        recording in bona fide law enforcement training;
- 8        (h) A county attorney, Commonwealth's attorney, public health officer, or  
9        coroner for the purpose of using the autopsy photograph, other visual  
10       image in whatever form, video recording, or audio recording in bona fide  
11       training;
- 12       (i) A licensed attorney for the purpose of using the autopsy photograph, other  
13       visual image in whatever form, video recording, or audio recording in a  
14       Kentucky continuing legal education program; and
- 15       (j) A person disseminating the image as part of an informative, expressive, or  
16       artistic work, whether analog or digital, that is:
- 17           1. Part of a play, book, magazine, newspaper, audiovisual work, or cable,  
18           broadcast, or satellite television program; or
- 19           2. Part of a work of art, including but not limited to news or  
20           commentary;
- 21        after a court with jurisdiction as provided in subsection (8)(a) of this  
22        section, in a proceeding including parties entitled to notice under subsection  
23        (8)(b) of this section, has determined that the autopsy photograph, other  
24        visual image in whatever form, video recording, or audio recording is  
25        newsworthy or pertains to a matter of public concern or public interest.
- 26       (2) (a) Except as provided in paragraph (b) of this subsection, no medical  
27       examiner, coroner, or other public official in lawful possession of an

1 autopsy photograph, other visual image in whatever form, video recording,  
2 or audio recording shall knowingly release those materials to any person  
3 not specifically authorized in subsection (1) of this section.

4 (b) A medical examiner, coroner, or other public official in lawful possession  
5 of an autopsy photograph, other visual image in whatever form, video  
6 recording, or audio recording may publish such material in a scientific  
7 journal or textbook, or use such material for bona fide teaching or training  
8 after:

9 1. Redacting the decedent's name, address, and Social Security number;  
10 and  
11 2. Obscuring any distinguishing physical features which would allow a  
12 viewer to identify the decedent, including but not limited to the  
13 decedent's face or any tattoos.

14 (3) No autopsy photograph, other visual image in whatever form, video recording, or  
15 audio recording supplied by the state medical examiner, coroner, or other public  
16 official in lawful possession of those materials pursuant to subsection (1)(b) to (j)  
17 of this section shall be used for any purpose not specifically described therein.

18 (4) When the purpose for the use of an autopsy photograph, other visual image in  
19 whatever form, video recording, or audio recording has been achieved, the  
20 material shall be destroyed by the person to whom it was made available under  
21 this section.

22 (5) When the state medical examiner, coroner, or other public official in lawful  
23 possession of an autopsy photograph, other visual image in whatever form, video  
24 recording, or audio recording makes the materials available under subsection  
25 (1)(f) to (j) of this section:

26 1. The name, address, and Social Security number of the decedent shall be  
27 redacted; and

1        2. Any distinguishing physical features which would allow a viewer to identify  
2        the decedent, including but not limited to the decedent's face or any tattoos,  
3        shall be obscured.

4        (6) Any person seeking any autopsy photograph, other visual image in whatever  
5        form, video recording, or audio recording pursuant to this Section shall pay any  
6        fee allowed under KRS 72.260 for the requested items.

7        (7) The provisions of this section shall not be construed to contravene or limit the  
8        production of records pursuant to the Rules of Civil Procedure or the Rules of  
9        Criminal Procedure.

10       (8) (a) The Circuit Court of the county where the decedent resided or, if the  
11       decedent was not a resident of the Commonwealth, in which an autopsy  
12       photograph, other visual image in whatever form, video recording, or audio  
13       recording is located may, upon a showing of good cause, issue an order  
14       authorizing any person to view or copy a photograph, other visual image in  
15       whatever form, video recording, or audio recording of an autopsy or to  
16       listen to or copy an audio recording of an autopsy, and may prescribe any  
17       restrictions or stipulations that the court deems appropriate. In determining  
18       good cause, the court shall consider whether this disclosure is necessary for  
19       the public evaluation of governmental performance, whether the disclosure  
20       is the least intrusive means available, and the availability of similar  
21       information in other public records, regardless of form. In all cases, the  
22       viewing, copying, listening to, or other handling of a photograph, other  
23       visual image in whatever form, video recording, or audio recording of an  
24       autopsy shall be under the direct supervision of the custodian of the record  
25       or of the custodian's designee.

26       (b) 1. The spouse or personal representative of the decedent shall be given:  
27       a. Reasonable notice of a petition filed with the court to view or

1                   copy a photograph, other visual image in whatever form, video  
 2                   recording, or audio recording of an autopsy or a petition to listen  
 3                   to or copy an audio recording;

4                   b. A copy of the petition; and

5                   c. Reasonable notice of the opportunity to be present and heard at  
 6                   any hearing on the matter.

7                   2. If there is no surviving spouse or personal representative, then the  
 8                   notice shall be given to the deceased's adult children or, if the  
 9                   deceased has no adult children, to the surviving parents of the  
 10                   deceased, and, if there is no individual to represent the estate of the  
 11                   decedent, then the court shall proceed to schedule a hearing without  
 12                   giving such notice.

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

14                   (1) Any person who violates KRS 72.020(1) or who interferes with the coroner in the  
 15                   lawful performance of his duties shall be fined not less than two hundred fifty  
 16                   dollars (\$250), or be confined in jail for not more than ninety (90) days, or both.

17                   (2) Any coroner or deputy coroner who violates KRS 72.025 or 72.020 shall be guilty  
 18                   of willful neglect of official duties and shall be fined no more than one thousand  
 19                   dollars (\$1,000) or forfeiture of office or both.

20                   (3) Any law enforcement officer who violates KRS 72.020 shall be guilty of willful  
 21                   neglect of official duties and shall be fined no more than one thousand dollars  
 22                   (\$1,000) or forfeiture of office or both.

23                   (4) (a) 1. Except as provided in subparagraph 2. of this paragraph, any  
 24                   violation of Section 1 of this Act by an individual other than the  
 25                   surviving spouse, children, parents, or personal representative of the  
 26                   decedent shall result in a fine of not more than five hundred dollars  
 27                   (\$500) for the first violation and not more than one thousand dollars

- 1                    *(\$1,000) for each subsequent violation.*
- 2                    *2. Any violation of subsection (3) of Section 1 of this Act shall result in a*
- 3                    *fine which equals the greater of the appropriate fine provided for in*
- 4                    *subparagraph 1. of this paragraph or three (3) times any profits*
- 5                    *derived from violating subsection (3) of Section 1 of this Act.*
- 6                    *(b) Any fine collected under paragraph (a) of this subsection shall be paid into*
- 7                    *the crime victims' compensation fund created under KRS 346.185.*

8                    ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 72 IS CREATED TO

9 READ AS FOLLOWS:

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

11                    ➔Section 4. This Act is not meant to alter or change in any way the current law in

12 the Commonwealth relating to the availability of autopsy records that are not otherwise

13 specifically provided for in this Act.