

IN THE SUPREME COURT OF OHIO

Case No. 2016-0387

STATE EX REL. MICHAEL CLAY,

Appellee,

v.

**CUYAHOGA COUNTY MEDICAL
EXAMINER'S OFFICE,**

Appellant.

**On Appeal from the
Cuyahoga County Court of Appeals,
Eighth Appellate District**

**MERIT BRIEF OF APPELLANT,
THE CUYAHOGA COUNTY MEDICAL EXAMINER**

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STATEMENT OF FACTS

The Appellee, Michael Clay, is incarcerated in Ohio's Mansfield Correctional Institution, serving a sentence of fifteen years to life on convictions of murder, felonious assault, and child endangering. *State of Ohio v. Michael Clay*, 9th Dist. Summit No. 23889, 2008-Ohio-2158, ¶ 7, *appeal not accepted*, 119 Ohio St.3d 1502, 2008-Ohio-5467, 895 N.E.2d 565. The murder victim, an eight-month-old baby girl, died on August 28, 2006, as a result of blunt force trauma to her head. *Id.* at ¶¶ 2, 23. Appellee Clay was the baby's father. (R. 1: Complaint/Petition for Writ of Mandamus, ¶ 1 (second), Exhibit D-1, Certificate of Birth.)

The autopsy of the baby was conducted by the Cuyahoga County Coroner's Office. (Complaint/Petition Exhibit C, Autopsy Protocol.) The Coroner's Office docketed the investigation as Case No. IN000260612. (*Id.*) The pathologist who performed the autopsy, Cuyahoga County Deputy Coroner Dan Galita, M.D., testified at Appellee Clay's criminal trial. (Complaint/Petition Exhibit C, Autopsy Protocol; Exhibit D, *State v. Michael Clay*, Summit C.P. No. 2006-12-4417 (August 13, 2007), Transcript excerpt, second page.) The autopsy protocol was admitted into evidence. (Complaint/Petition Exhibit D, *State v. Clay* Transcript excerpt, pages 919-920.)

In April, 2015, the Cuyahoga County Medical Examiner's Office¹ received a letter from Appellee Clay requesting certain records from Case No. IN000260612:

¹ In 2009, Cuyahoga County adopted a county charter that replaced the county's three-member board of commissioners with a county executive and council and changed several elective county offices to appointed positions under the administration of the county executive. *See State ex rel. ACLU of Ohio v. Cuyahoga County Bd. of Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 2. As a result of this process, effective in 2011, the position of Cuyahoga County Coroner was eliminated and the duties of that office are performed by the Cuyahoga County Medical Examiner. *See* R.C. 1.62(A). The relevant references in statutes, particularly R.C. 313.10, and case law are to "coroner," and that term is used throughout this Brief other than in references to the Appellant Medical Examiner's Office itself.

Under the provisions of Revised Code § 149.43 and 313.10, I am requesting access to all x-rays, photographs taken during the autopsy presented in the trial case of State of Ohio v. Michael Clay, 2006-CR-12-4417. I am requesting a copy of the certified death certificate, as well as any and all reports written by Dr. Elizabeth K. Balraj,^[2] and Dr. Daniel Galita; Case No. IN000260612, Autopsy No. AU000082729.

(R. 1: Complaint/Petition, Exhibit A, April 15, 2015 letter.) In his request letter, Appellee Clay stated that he is “the biological father of the deceased.”

The Appellant Medical Examiner’s Office responded that the only coroners’ records publicly available without a subpoena are “verdict / laboratory / autopsy,” and directed Appellee Clay to Cleveland City Hall, with a telephone number, to obtain a certified death certificate. (*Id.*) Appellee Clay sent another letter, reiterating that he was requesting x-rays, photographs, a death certificate, and all reports written by Dr. Balraj and Dr. Galita. (Complaint/Petition, Exhibit B, April 24, 2015 letter.) He also complained that the Medical Examiner’s response did not comply with the provisions of the Public Records Act, set out in R.C. 149.43(B)(3), concerning denial of a request for records. He again cited R.C. 149.43 and R.C. 313.10, the coroners’ records statute, and noted that he is “the next of kin of the decedent.” (*Id.*) Appellant Medical Examiner’s Office did not provide the records to Appellee Clay.

The Summit County Common Pleas Court docket record from *State v. Michael Clay* establishes that Appellee Clay did not apply to the Summit County Common Pleas Court for a determination that the records from his victim/daughter’s autopsy were necessary “to support what appears to be a justiciable claim of the person.” R.C. 149.43(B)(8). (R. 4: Motion of Respondent to Dismiss Relator’s Action [etc.], Motion Exh. 2, Docket of the Summit County Court of Common Pleas, Case No. CR 2006-12-4417, *State v. Michael Clay*.)

² In 2006, Dr. Balraj held the office of Cuyahoga County Coroner. Her name appears on the Autopsy Protocol and Coroner’s Verdict. (R. 1: Complaint/Petition Exhibit C, Autopsy Protocol.)

STATEMENT OF THE CASE

In September, 2015, Appellee Clay filed an original action in the Eighth District Court of Appeals seeking a writ of mandamus to require the Appellant Medical Examiner's Office to provide all x-rays and photographs taken during the autopsy, and written reports by Dr. Balraj and Dr. Galita in his victim/daughter's autopsy. Appellee Clay claimed both that he was entitled to the records under R.C. 149.43 because they are public records and that he was entitled to the records under R.C. 313.10 because he is next-of-kin to the decedent.

Appellant Medical Examiner's Office filed a motion to dismiss the action, arguing that R.C. 313.10 should be read in pari materia with R.C. 149.43, and that since Appellee Clay, an incarcerated person, did not qualify to receive records about a criminal investigation pursuant to R.C. 149.43(B)(8), the Medical Examiner's Office did not have a duty to provide him records about his victim's autopsy pursuant to R.C. 313.10(C)(1). Appellant Medical Examiner requested that the motion to dismiss be converted pursuant to Civ. R. 12(B)(6) to a proceeding under Civ. R. 56 in order to allow consideration of certain matters outside the pleadings:

- Docket of the Summit County Court of Common Pleas in Case No. CR 2006-12-4417, *State of Ohio v. Michael Clay*;
- Opinion of the Court of Appeals for the 9th District, Ohio, Summit County, in *State of Ohio v. Michael Clay*, C.A. No. 23889, 2008-Ohio-2158, 2008 WL 1961209;
- Order of the Supreme Court of Ohio in *State of Ohio v. Michael Clay*, Supreme Court Case No. 2008-1220, 119 Ohio st.3d 1502, 2008-Ohio-5467, 895 N.E.2d 565, declining jurisdiction and dismissing the appeal from Summit County Court of Appeals Case No. 23889; and
- Opinion of the Court of Appeals for the 9th District, Ohio, Summit County, in *State of Ohio v. Michael Clay*, C.A. No. 25743, 2011-Ohio-5370, 2011 WL 4954155.

(R. 4: Motion of Respondent to Dismiss Relator's Action [etc.].) The court of appeals granted the request to convert the proceeding pursuant to Civ. R. 12(B)(6) and established a briefing schedule for summary judgment proceedings. (R. 8: Judgment Entry dated Nov. 9, 2015.)

Appellee Clay subsequently sought leave to amend his Petition/Complaint to eliminate references to the Public Records Act, R.C. 149.43, in order to leave R.C. 313.10 as the sole statute under which he claimed relief. (R. 16: Motion to Amend Pleadings (Jan. 8, 2016).) The court of appeals denied the motion to amend. (R. 22: Journal Entry denying motion to amend pleadings (Feb. 3, 2016).)

The court of appeals issued its journal entry and opinion on February 3, 2016, denying Appellant's motion for summary judgment and granting the complaint/petition. The court of appeals ruled that R.C. 149.43 and R.C. 313.10 are not related and therefore are not required to be read in *pari materia*. *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner's Office*, 8th Dist. Cuyahoga No. 103514, 2016-Ohio-407, ¶ 8. The court of appeals therefore concluded that pursuant to R.C. 313.10(C)(1), "the coroner has a clear legal duty to provide Clay with the complete autopsy file." *Id.* The court of appeals issued a writ of mandamus and ordered "the coroner * * * to provide Clay with the complete autopsy file created with regard to the death of his child." *Id.* at ¶ 9.

The Cuyahoga County Medical Examiner's Office timely appealed in accordance with S.Ct.Prac. R. 5.01(A)(3). Appellant Medical Examiner is now seeking a ruling reversing the judgment of the court of appeals and denying the writ.

ARGUMENT

Proposition of Law No. I: R.C. 149.43 and R.C. 313.10 relate to the same general subject, access to coroners' records, and must be construed in pari materia.

The language, the function, and the legislative history of R.C. 313.10 establish that it concerns which records of a coroner are public records, which are not public records, and which non-public records may be accessed by specified classes of persons. R.C. 149.43 is concerned with these same subjects as to records of public offices generally. R.C. 313.10 uses the phrase “public records” four times and expressly references R.C. 149.43 three times. The coroners’ records statute and the public records statute clearly govern the same subject matter: access to records of a government office’s functions. The two statutes must be construed in pari materia in order to effectuate the legislature’s full statutory scheme.

A. Statutory provisions relating to the same subject matter are construed in pari materia and must be harmonized to give full effect to the provisions unless they are in hopeless conflict.

The principle of in pari materia requires all statutory provisions pertaining to the same general subject matter to be construed together. *In re Z.R.*, 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239, ¶ 19; *State ex rel. Gains v. Rossi*, 86 Ohio St.3d 620, 622, 716 N.E.2d 204 (1999). When two statutes relate to the same subject, they should be read in pari materia. *State v. Pariag*, 137 Ohio St.3d 81, 2013-Ohio-4010, 998 N.E.2d 401, ¶ 32.

The purpose of the principle of in pari materia is to give full effect to the statutory provisions relating to the same subject. *Chesapeake Exploration, L.L.C. v. Oil & Gas Comm.*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 14; *State ex rel. Triplett v. Ross, Judge*, 111 Ohio St.3d 231, 2006-Ohio-4705, 855 N.E.2d 1174, ¶ 45. All provisions bearing upon the same subject matter should be construed harmoniously, and courts should give full application to

each such statutes unless they are irreconcilable and in hopeless conflict. *State v. Cook*, 128 Ohio St.3d 120, 2010-Ohio-6305, 942 N.E.2d 357, ¶ 45; *State ex rel. Gains*, supra. In construing statutory provisions relating to the same subject matter together, courts must give a reasonable construction so as to give the proper force and effect to each and all provisions. *Id.*

In this case, court of appeals concluded that the principle of in pari materia is not applicable, because it erroneously concluded that R.C. 149.43 and R.C. 313.10 do not relate to the same subject matter: “R.C. 149.43 deals with public records and is not applicable herein, because the complete autopsy file is not a public record.” *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner’s Office*, 8th Dist. Cuyahoga No. 103514, 2016-Ohio-407, at ¶¶ 6, 7. However, R.C. 149.43 and R.C. 313.10 both apply to the general subject matter of the public or non-public nature of records in a coroner’s file, and who is entitled to access those records that are not public. Consequently, the statutes must be read in pari materia to determine whether Appellee Clay is entitled to his victim/daughter’s entire autopsy file on request.

B. R.C. 313.10 and R.C. 149.43 are interpreted together to determine whether coroners’ records should be released to incarcerated persons.

Formerly, the coroners’ records statute, R.C. 313.10 (formerly General Code 2855-11) stated simply that “[t]he records of the coroner ... are public records”:

The records of the coroner, made by himself or by anyone acting under his direction or supervision are public records, and such records or transcripts, or photostatic copies thereof, certified by the coroner, shall be received as evidence in any criminal or civil court in this state, as to the facts contained in such records.

See State v. Goshay, 8th Dist. Cuyahoga No. 63902, 1993 Ohio App. LEXIS 5551, *18-19 (Nov. 18, 1993); *Carson v. Metropolitan Life Ins. Co.*, 156 Ohio St. 104, 110, 100 N.E.2d 197 (1951). In *State v. Sharp*, 162 Ohio St. 173, 122 N.E.2d 684 (1954), decided by this Court around the transition from the General Code to the Revised Code, this rule was established as syllabus law:

Under Section 2855-11, General Code (Section 313.10, Revised Code), the records of a coroner are public records and are open to inspection by the public.

Sharp, paragraph one of the syllabus.

Nonetheless, this Court's precedent has been to consider both R.C. 149.43 and R.C. 313.10 in order to determine whether a particular death investigation record is subject to release. This Court ruled that autopsy reports of homicide victims are not public records in *State ex rel. Dayton Newspapers, Inc. v. Rauch*, 12 Ohio St.3d 100, 465 N.E.2d 458 (1984). In *Rauch*, this Court determined that because autopsies in homicide cases are law enforcement investigatory records, the detailed autopsy reports are governed by the exemption from public disclosure in R.C. 149.43(A)(2)(c), as "specific investigatory workproduct." The Court applied the legislative policy in R.C. 149.43(A)(2)(c) to protect the confidentiality of the contents of an autopsy report, in order to protect its "effective use in further investigation by law enforcement personnel." 12 Ohio St.3d at 101. The Court could not have reached this result by considering the coroners' records statute alone, without consideration of the broader statutory scheme of laws established in R.C. 149.43 concerning access to records created in the course of homicide investigations.

In a mandamus action seeking access to a coroner's records pertaining to suicides, this Court reviewed both R.C. 149.43 and R.C. 313.10 in reaching its conclusion that those particular records were public records that were subject to disclosure to the requestor. *State ex rel. Findlay Publ. Co. v. Schroeder*, 76 Ohio St. 3d 580, 583, 669 N.E.2d 835 (1996). In *Schroeder*, the Court considered whether any of the exemptions from disclosure in R.C. 149.43 applied to the coroner's records concerning suicides, despite the fact that R.C. 313.10 stated directly that "the records of the coroner ... are public records." The Court determined that, unlike the homicide autopsy records in *Rauch*, no exemptions applied to the records of deaths due to suicide.

In these cases, this Court gave applied the provisions of R.C. 149.43 to determine whether the requestors were entitled to the autopsy records that they were seeking, rather than simply applying the plain language of the coroners' records statute, R.C. 313.10. This analysis was necessary because both statutes apply to the general subject matter of which records in a coroner's file are subject to disclosure.

C. The legislative history of R.C. 313.10 demonstrates that the provisions concerning access to coroners' records are intended to operate harmoniously with R.C. 149.43.

The goal of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Hulsmeyer v. Hospice of Southwest Ohio, Inc.*, 142 Ohio St.3d 236, 2014-Ohio-5511, 29 N.E.3d 903, ¶ 21. "In determining the intent of the General Assembly, 'we must first look to the statutory language and the purpose to be accomplished.'" *Id.*, quoting *Sutton v. Tomco Machining, Inc.*, 129 Ohio St.3d 153, 2011-Ohio-2723, 950 N.E.2d 938, ¶ 12. The circumstances in which the statute was enacted or amended can inform that determination. *Risner v. Ohio Dept. of Natural Resources*, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.3d 718, ¶ 20. The legislative history of the amendments to R.C. 313.10, including the division that gives next-of-kin access to the coroner's records of their decedent's death investigation, shows that when the next-of-kin provision was added to the law, the General Assembly was concerned about the forensic use of coroners' records, rights of access for those who have a personal or business reason to review coroners' records, and about coordination with the Public Records Act.

In 2006, R.C. 313.10 was extensively amended to categorize various types of records in a coroner's file as public or non-public, and to provide access rights of various categories of persons who may have an interest in autopsy records. One of these amendments was the next-of-kin access provision that Appellee Clay relies upon.

House Bill 235 was introduced in May, 2005, during the 126th General Assembly, and passed by the House in October, 2005. 2006 Am.Sub.H.B. No. 235, Ohio General Assembly Archives, Status Report of Legislation, <http://lsc.state.oh.us/coderev/hou126.nsf/House+Bill+Number/0235?OpenDocument>. As introduced and as passed by the House, the bill proposed amending R.C. 313.10 by specifying that certain records of a death investigation are not public records and that the detailed report of the autopsy observations and conclusions are public records. In addition, the House's bill added a new provision to R.C. 313.10 that allowed the next-of-kin of a decedent to see autopsy photographs and suicide notes. 2006 Am.Sub.H.B. No. 235, Ohio General Assembly Archives, "As Introduced, http://archives.legislature.state.oh.us/bills.cfm?ID=126_HB_235_I; "As Passed by the House," http://archives.legislature.state.oh.us/bills.cfm?ID=126_HB_235_PH.

Under the House version of H.B. No. 235, the next-of-kin that were permitted access the records were the spouse; and if no surviving spouse, then adult children; and if no adult children, then parents; and if no surviving parents, then to siblings. If a relative with superior rights made a request for the records then died, the successor next-of-kin does not have a right to request the records. It is clear that the legislature intended to be restrictive even with respect to the relatives of the decedent that could claim special access to the records of the decedent's death investigation.

The bill was reported out of the Senate Judiciary-Civil Justice Committee on March 1, 2006, as Sub.H.B. No. 235, with additional amendments. 2006 Am.Sub.H.B. No. 235, Ohio General Assembly Archives, "Status Report of Legislation," supra, and "As Reported by Senate Committee," http://archives.legislature.state.oh.us/bills.cfm?ID=126_HB_235_RS. The Committee's proposed amendments to R.C. 313.10 modified the division listing types of non-

public records by reference to two new provisions that gave limited access to journalists and to insurers. Insurers could request to view “the full and complete records of the coroner” with respect to a deceased person, and journalists were entitled to view all of the records except medical or psychiatric records that the coroner had obtained from other health care providers. The Senate Committee also added the representative of the estate at the end of the list of next-of-kin that could request photographs or suicide notes.

The bill was passed by the Senate as Am.Sub.H.B. No. 235 on March 14, 2006. By then, the next-of-kin amendment had been modified to state that the next-of-kin should be provided the same scope of records that an insurer would be provided: “the full and complete records of the coroner” with respect to the deceased person. 2006 Am.Sub.H.B. No. 235, Ohio General Assembly Archives, “As Passed by the Senate,” http://archives.legislature.state.oh.us/bills.cfm?ID=126_HB_235_PS.

The proposed amendments to R.C. 313.10 included in the Senate’s version of Am.Sub.H.B. No. 235 were reported out by the Conference Committee unchanged. The bill was signed into law on May 16, 2006. 2006 Am.Sub.H.B. No. 235, Ohio General Assembly Archives, “Status Report of Legislation,” supra. The amendments became effective August 17, 2006. Am.Sub.H.B. No. 235, 151 Ohio Laws, Part IV, 7190.

R.C. 313.10 was amended again in 2008 “to specify that certain records of a decedent relating to the criminal investigation of the decedent’s death are not public records.” 2008 Sub. H.B. No. 471, Title. The amendment added two categories of records to the list of “full and complete records of the coroner” that are not public records: confidential law enforcement investigatory records as defined in R.C. 149.43, and “laboratory reports generated from the

analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16.” R.C. 313.10(A)(2)(e), -(f).

It is clear from the legislative history and the language in R.C. 313.10 that the General Assembly intends its provisions to operate harmoniously with the Rules of Criminal Procedure, the routine business needs of insurers, the health care record privacy obligations of medical and psychiatric service providers, and the Public Records Act. The coroners’ records statute does not stand alone, independent from other statutory schemes established in the Revised Code. R.C. 149.43 and R.C. 313.10 both apply to the general subject matter of the public or non-public nature of records in a coroner’s file, and who is entitled to access to those records, including those records that are not public. Consequently, the statutes must be read in *pari materia* to determine whether Appellee Clay is entitled to his victim/daughter’s entire autopsy file on request.

Proposition of Law No. II: A coroner’s office is not required to permit a person who is incarcerated pursuant to a criminal conviction to inspect or to obtain a copy of records concerning a death investigation if the person requesting the record is incarcerated for causing the death of the person who is the subject of the record unless the incarcerated person has complied with R.C. 149.43(B)(8), regardless of whether the incarcerated person is the next-of-kin of the decedent.

The requirements for issuance of a writ of mandamus are well established: The relator must demonstrate a clear legal right to relief; the respondent must have a clear legal duty to perform the requested relief; and there must be no adequate remedy in the ordinary course of law. *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St.3d 370, 2014-Ohio-4022, 31 N.E.3d 596, ¶ 9. But a writ of mandamus is not granted by right, but rather by the sound discretion of the court. *Patton v. Springfield Bd. of Edn.*, 40 Ohio St.3d 14, 15, 531

N.E.2d 310 (1988). “The writ of mandamus is an extraordinary remedy, exercised by this court with caution and issued only when the right is clear.” *State ex rel. Brown* at ¶ 11.

If only R.C. 313.10(C)(1) and the dead child’s birth certificate are considered, it would appear that Appellee Clay is entitled to the records that he has requested. But when his records request is considered in the broader context, to include the facts that he is incarcerated and that he has been convicted of murdering the child whose autopsy records he seeks, and to include the statutory provisions established in R.C. 149.43(B)(8) to regulate incarcerated persons’ access to records concerning their criminal investigations and prosecutions, then Appellee Clay’s entitlement to the records is not plain or clear or convincing. When all the facts and related legal principles are taken into consideration, they lead to the conclusion that Appellee Clay does not have a clear legal right to the relief he is seeking, and that his proper remedy exists in traditional procedures for post-conviction relief.

A. The General Assembly did not intend the incarcerated person restrictions in R.C. 149.43(B)(8) to limit inmates’ access to public records but not to limit inmates’ access to non-public records.

The General Assembly has expressed its policy determination that an incarcerated person does not have the same rights to request government records as do requesters who are not incarcerated. This Court should read R.C. 313.10(C)(1) in pari materia with R.C. 149.43(B)(8) and conclude that an incarcerated person who has been convicted of killing his next-of-kin does not have the same rights to coroners’ death investigation records as do grieving family members who did not kill their deceased next-of-kin. When R.C. 313.10 is read in pari materia with R.C. 149.43, the special restriction established in R.C. 149.43(B)(8) must be applied to an incarcerated person seeking records concerning the coroner’s homicide investigation that led to their conviction, even if their victim was their next-of-kin. “R.C. 149.43(B)(8) requires an

incarcerated criminal offender who seeks records relating to an inmate's criminal prosecution to obtain a finding by the sentencing judge or the judge's successor that the requested information is necessary to support what appears to be a justiciable claim." *State ex rel. Fernbach v. Brush*, 133 Ohio St.3d 151, 2012-Ohio-4214, 976 N.E.2d 889, ¶ 2.

In R.C. 149.43(B)(8), the General Assembly has established that persons incarcerated pursuant to a criminal conviction who are seeking law enforcement investigatory records are not entitled to access to those records unless two conditions are met: (1) the record requested must be a public record, and (2) the inmate's sentencing judge or successor in office must find that access to the record is appropriate. The provision states:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction * * * to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution * * * unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

Appellee Clay argued successfully to the court of appeals that the restrictions in R.C.149.43(B)(8) apply only to public records and do not limit inmate access to non-public or confidential records. *State ex rel. Clay* at ¶ 7 ("the complete autopsy file is not a public record."). However, R.C.149.43(B)(8) establishes two criteria for access: that the information is subject to release as a public record, and that the person has secured the necessary determination from the sentencing court. It would be superfluous for subdivision (B)(8) to specify that the record must be a public record if the only records that this provision regulates are public records.

R.C. 149.43(B)(8) does not require an initial determination that the record sought by the incarcerated person is a public record in order for the judicial screening provisions to be

applicable to the request. An inmate's request may be denied for failure to obtain the sentencing judge's determination without regard to whether or not the records sought are public records. For example, in *State ex rel. Fernbach*, supra, this Court affirmed denial of the writ of mandamus based upon the incarcerated criminal offender's failure to obtain a finding by his sentencing judge or the judge's successor that the requested information is necessary to support what appears to be a justiciable claim, and did not separately consider whether the records were also public records. *Fernbach* at ¶ 2.

This Court looked at the fact that the requester was an incarcerated person, and did not discuss the issue of whether or not the records the inmate was requesting were public records in *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 124 Ohio St.3d 238, 2010-Ohio-120, 921 N.E.2d 236, ¶ 1. The litigant in *Barb* was an inmate seeking lists of prospective jurors and jurors who served in three criminal cases in which he was a defendant. This Court affirmed denial of the writ of mandamus sought by Barb, stating that he was "not entitled to the requested records because he did not comply with R.C. 149.43(B)(8), which requires a finding by Barb's sentencing judge or the judge's successor that the requested information is necessary to support what appears to be a justiciable claim." The Court observed that under the restrictions imposed by R.C. 149.43(B)(8), "incarcerated persons and the purpose for which they seek records relating to a criminal investigation or prosecution are dispositive." *Id.*

The incarcerated person provision was added to R.C. 149.43 in 1999, in Am. Sub. S.B. No. 78, which amended only the Public Records Act. The Final Analysis of the Act provided by the Legislative Service Commission does not describe the restriction now codified as subdivision (B)(8) as being limited to only public records, but rather as applying to criminal investigation or prosecution records generally:

ACT SUMMARY

* *

- Restricts the access of certain incarcerated persons to criminal investigation or prosecution records unless such a record is a public record and the judge who imposed the sentence or made the juvenile adjudication with respect to such a person, or the judge's successor, finds the information sought to be necessary to support an apparent justiciable claim of the person.

1999 Am.Sub.S.B. No. 78, Ohio General Assembly Archives, “Final Bill Analysis,” <http://lsc.state.oh.us/analyses/fnl123.nsf/All%20Bills%20and%20Resolutions/3C735A9FF7EB7229852567B00046B3F0>.

The legislation is expressly directed at regulation of incarcerated persons’ requests for records relating to the investigation and prosecution of the crimes for which they have been convicted. An autopsy in the case of a homicide is an investigation of a crime. *Rauch*, 12 Ohio St.3d at 101, 465 N.E.2d 458. The non-public records created through the autopsies of homicide victims are clearly within the scope of records to which the General Assembly intended the incarcerated persons restrictions in R.C. 149.43(B)(8) to apply.

This Court has recognized that by enacting the inmate record restriction, the “General Assembly clearly evidenced a public-policy decision to restrict a convicted inmate’s unlimited access to public records in order to conserve law enforcement resources.” *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 14. This Court observed:

The language of the statute is broad and encompassing. R.C. 149.43(B)(4)^[3] clearly sets forth heightened requirements for *inmates* seeking public records. The General Assembly's broad language clearly includes offense and incident reports as documents that are subject to the additional requirement to be met by inmates seeking records concerning a criminal investigation or prosecution.

Id. (emphasis in original).

³ The incarcerated person subdivision was later renumbered from R.C. 149.43(B)(4) to its current citation, R.C. 149.43(B)(8). Sub.H.B. No. 9, 151 Ohio Laws, Part IV, 8219, 8236.

The fact that the General Assembly placed the incarcerated person restrictions within the Public Records Act does not mean that the restrictions only apply to requests for records that are in fact public records or that the inmate believes are public records. It is untenable to conclude that the General Assembly was concerned with restricting a convicted inmate's unlimited access to public records but unconcerned with restricting a convicted murderer's unlimited access to records that are not public. The reasonable construction of the incarcerated persons restriction is that it applies to any request for criminal investigation or prosecution records requested by an incarcerated person, whatever basis the inmate cites as the reason that he or she should be allowed to have the records.

B. Persons incarcerated for murdering victims who were not their next-of-kin are not permitted to access records of their criminal investigation and prosecution without complying with R.C. 149.43(B)(8).

In its first case applying the inmate access restriction in R.C. 149.43, this Court ruled that the inmate litigant was not entitled to the records he sought because of the new statutory limitations on incarcerated persons' inspecting or obtaining records concerning criminal investigations or prosecutions. *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458, 459, 727 N.E.2d 910 (2000). The Court added that inmates could not use R.C. 149.43 to obtain records for a post-conviction relief petition:

Finally, to the extent that Sevayega requests records that are exempt from disclosure in order to support a future postconviction relief petition, "[a] defendant in a criminal case who has exhausted the direct appeals of her or his conviction may not avail herself or himself of R.C. 149.43 to support a petition for postconviction relief." *State ex rel. Larson v. Cleveland Pub. Safety Dir.*, 744 Ohio St.3d 464, 465, 659 N.E.2d 1260, 1261 (1996), quoting *State ex rel. Steckman v Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (1994), paragraph six of the syllabus.

Id.

The relator/appellant in *Sevayega* was not incarcerated as a result of a conviction for murder, but other inmate-relators who were, like Appellee Clay, incarcerated for murder convictions, have been unable to obtain copies of records concerning their criminal investigations or prosecutions because they did not comply with the requirements of R.C. 149.43(B). In the three cases listed below, the relator was, like Appellee Clay, a convicted murderer seeking coroner's records, and his failure to meet the judicial determination requirement in R.C. 149.43(B) was cited as a basis for denying him relief:

- *State v. Roberts*, 5th Dist. Guernsey No. 2007-CA-33, 2008-Ohio-3115: Public records claim by appellant, convicted of murder, for records concerning the criminal investigation including autopsy records, denied based on former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)].
- *State ex rel. Hughes v. Mason*, 8th Dist. Cuyahoga No. 89537, 2007-Ohio-2236: Public records claim by inmate, incarcerated for murder of a police officer, for records concerning the criminal investigation, including autopsy reports (see *State ex rel. Roberson v. Mason*, 8th Dist. Cuyahoga No. 91783, 2009-Ohio-1884, ¶ 1), denied based on former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)].
- *State ex rel. Walker v. Balraj*, 8th Dist. Cuyahoga No. 77967, 2000 Ohio App. LEXIS 3620 (Aug. 2, 2000): Public records claim by inmate, incarcerated for murder, for records concerning criminal investigation during the autopsy denied based on former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)].

In the eleven cases listed below, the relator or appellant was a convicted murderer seeking records from the criminal investigation or prosecution that led to his conviction, and his failure to meet the judicial determination requirement in R.C. 149.43(B) was cited as a basis for denying him relief:

- *State v. Dowell*, 8th Dist. Cuyahoga No. 102408, 2015-Ohio-3237, *appeal not allowed*, 143 Ohio St.3d 1545, 2015-Ohio-4633, 40 N.E.3d 1181: Public records claim by appellant, convicted of murder, for records concerning the criminal investigation denied based on R.C. 149.43(B)(8).
- *State v. Heid*, 4th Dist. Scioto No. 14CV3668, 2015-Ohio-1502: Public records claim by appellant, incarcerated for murder, for records he wished to use for a delayed appeal denied based upon R.C. 149.43(B)(8).

- *Banks v. Rocco*, 8th Dist. Cuyahoga No. 100076, 2013-Ohio-4048: Public records claim by appellant, incarcerated for murder, for investigative and prosecution records concerning his criminal conviction denied based on R.C. 149.43(B)(8).
- *State v. Jackson*, 2nd Dist. Montgomery No. 25478, 2013-Ohio-3650: Public records claim by appellant, incarcerated for murder, for transcript prepared for his prosecution records concerning his criminal conviction that he wished to use for post-conviction relief denied based on R.C. 149.43(B)(8).
- *State v. Reid*, 2nd Dist. Montgomery No. 24672, 2012-Ohio-1659: Public records claim by appellant, convicted of murder, for records concerning the criminal investigation denied based on R.C. 149.43(B)(8).
- *State ex rel. Herboltzheimer v. City of Columbus*, 10th Dist. Franklin No. 05AP-397, 2005-Ohio-5169: Public records claim by inmate, incarcerated for murder, for records concerning his criminal investigation denied based on former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)].
- *State ex rel. Cohen v. Mazeika*, 11th Dist. Lake No. 2004-L-048, 2004-Ohio-3340: Public records claim by inmate, incarcerated for murder, for records involved in his criminal prosecution denied based on former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)].
- *State ex rel. Hightower v. Russo*, 8th Dist. Cuyahoga No. 82321, 2003-Ohio-3679: Public records claim by inmate, incarcerated for murder, for records involved in his criminal prosecution denied based on former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)].
- *State ex rel. Henderson v. Cleveland Police Dept.*, 8th Dist. Cuyahoga No. 78891, 2001 Ohio App. LEXIS 2535 (June 1, 2001): Public records claim by inmate, incarcerated for murder, for records concerning his criminal investigation denied based on former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)].
- *State ex rel. Whittaker v. Court of Common Pleas*, 8th Dist. Cuyahoga No. 78718, 2001 Ohio App. LEXIS 680 (Feb. 15, 2001): Public records claim by inmate, incarcerated for murder, for records concerning criminal investigation and prosecution denied; failure to comply with former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)] noted.
- *State ex rel. Arnold v. Dept. of Public Safety Div. of Police*, 8th Dist. Cuyahoga No. 78504, 2000 Ohio App. LEXIS 5688 (Nov. 30, 2000): Public records claim by inmate, incarcerated for murder, for records concerning criminal investigation denied based on former R.C. 149.43(B)(4) [now at R.C. 149.43(B)(8)].

“It is the function of courts to construe statutory language to effect a just and reasonable result,” and to reject interpretations that would result in unreasonable or absurd consequences. *Columbia Gas Transmission Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, 882 N.E.2d 400, ¶ 35, citing R.C. 1.47(C). It would not be just or reasonable to allow persons convicted of murdering their spouse, their parent, their child, or their sibling to have greater rights to access criminal investigation records concerning their crimes than the rights afforded persons who are convicted of murdering persons who are not their next-of-kin.

It should be noted that “the full and complete records of the coroner” to which next-of-kin are allowed access include “Records of a deceased individual that are confidential law enforcement investigatory records as defined in section 149.43 of the Revised Code.” R.C. 313.10(G)(1)(f). That category includes investigative reports and trial preparation evidence that has been provided to the coroner by the police detectives. Those confidential, non-public records police records will be given to the next-of-kin along with the other non-public and public records in the coroner’s file. They should not be given to the decedent’s convicted murderer on request.

These are records that a person charged with or convicted of murder would only receive through discovery under the Rules of Criminal Procedure, appeals from conviction or other proceedings for post-conviction relief, including habeas corpus actions. It would be unreasonable and arbitrary to award unique access to these criminal investigatory records to a particular class of murderers based solely upon their choice of victim.

This Court should read R.C. 313.10(C)(1) in pari materia with R.C. 149.43(B)(8) and conclude that R.C. 149.43(B)(8) requires an incarcerated criminal offender who seeks records relating to an inmate’s criminal investigation or prosecution to obtain a finding by the sentencing judge or the judge’s successor in office that the requested information is necessary to support

what appears to be a justiciable claim. *State ex rel. Fernbach, supra.* This Court should determine that the incarcerated person restriction established in R.C. 149.43(B)(8) must be applied to an incarcerated person seeking records concerning the coroner's homicide investigation that led to their conviction, even if the inmate's victim was their next-of-kin, even if the inmate's victim was his own eight-month-old baby.

CONCLUSION

Appellee Clay is an incarcerated criminal offender, a convicted murderer, seeking records from his victim's autopsy. He has not sought a determination from the court that sentenced him that the information he is seeking is necessary to support a justiciable claim. This Court should read R.C. 313.10(C)(1) in pari materia with R.C. 149.43(B)(8) and decide that because Appellee Clay has not sought or obtained that determination, he is not entitled to the records from his victim/daughter's autopsy that he has requested. It is inconceivable that the General Assembly intended to provide murderers with expansive rights to their victims' autopsy reports only if their victims were family members rather than strangers.

R.C. 149.43(B)(8) plainly evidences the General Assembly's policy determination that there should be oversight and procedural restrictions on incarcerated criminal offenders' ability to obtain criminal investigative records outside of their remedies for post-conviction review. Appellant, the Cuyahoga County Medical Examiner, respectfully submits that this Court should reverse the decision of the 8th District Court of Appeals and deny issuance of the writ of mandamus sought by Appellee Michael Clay for the xrays and photographs taken of his victim/daughter's body during her autopsy and the notes made by Dr. Galita or Dr. Balraj during their investigation of her homicide.

Respectfully submitted,

TIMOTHY J. MCGINTY, Prosecuting
Attorney for Cuyahoga County, Ohio

/s/ Barbara R. Marburger
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*Attorney for Appellant
Cuyahoga County Medical Examiner's Office*

CERTIFICATE OF SERVICE

A copy of this Merit Brief of Appellant was served on July 5, 2016, by placing it in the U.S. mail, postage prepaid, directed as follows:

Michael Clay, A 533044
Mansfield Correctional Institution
1150 North Main Street
P.O. Box 788
Mansfield, OH 44901-0788

Appellee (pro se)

/s/ Barbara R. Marburger
BARBARA R. MARBURGER

APPENDIX

IN THE SUPREME COURT OF OHIO

Case No. _____

STATE EX REL. MICHAEL CLAY,

Appellee,

v.

CUYAHOGA COUNTY MEDICAL
EXAMINER'S OFFICE,

Appellant.

On Appeal from the
Cuyahoga County Court of Appeals,
Eighth Appellate District

Court of Appeals
Case No. CA-15-103514

NOTICE OF APPEAL
OF APPELLANT, THE CUYAHOGA COUNTY MEDICAL EXAMINER

MICHAEL CLAY
A 533044
Mansfield Correctional Institution
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Mansfield, OH 44901-0788

Appellee (pro se)

TIMOTHY J. MCGINTY, Prosecuting Attorney for
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Attorney for Appellant

Cuyahoga County Medical Examiner's Office

Notice of Appeal of Appellant, The Cuyahoga County Medical Examiner's Office.

Appellant, the Cuyahoga County Medical Examiner's Office, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in *State ex rel. Michael Clay v. Cuyahoga County Medical Examiner's Office*, Court of Appeals Case No. 15-103514, on February 3, 2016.

This case originated in the court of appeals.

Respectfully submitted,

TIMOTHY J. MCGINTY, Prosecuting
Attorney for Cuyahoga County, Ohio

/s/ Barbara R. Marburger
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*Attorney for Appellant
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CERTIFICATE OF SERVICE

A copy of this Notice of Appeal was served on March 15, 2016, by placing it in the U.S. mail, postage prepaid, directed as follows:

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Appellant (pro se)

/s/ Barbara R. Marburger
BARBARA R. MARBURGER

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103514

STATE OF OHIO, EX REL.
MICHAEL CLAY

RELATOR

vs.

CUYAHOGA COUNTY MEDICAL EXAMINERS
OFFICE

RESPONDENT

**JUDGMENT:
WRIT GRANTED**

Writ of Mandamus
Motion No. 492634
Order No. 492635

RELEASE DATE: February 3, 2016

FOR RELATOR

Michael Clay, pro se
Inmate No. 583044
Mansfield Correctional Institution
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ATTORNEYS FOR RESPONDENT

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By: Barbara R. Marburger
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KATHLEEN ANN KEOUGH, P.J.:

{¶1} Michael Clay has filed a complaint for a writ of mandamus. Clay seeks an order from this court that requires the Cuyahoga County Medical Examiner's Office ("coroner") to provide him with all x-rays, photographs, and written reports that were created during the autopsy of his daughter in Cuyahoga Coroner Case No. IN00260612 - Autopsy No. AU000082729. The coroner has filed a motion for summary judgment, which we deny for the following reasons.

{¶2} In order for this court to issue a writ of mandamus, Clay must establish a clear legal right to the requested autopsy file, a clear legal duty on the part of the coroner to provide the requested autopsy file, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452; *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215. Herein, Clay's request for all x-rays, photographs, and written reports, that were created during the autopsy of his deceased daughter, is premised upon R.C. 313.10.

{¶3} Ordinarily, many of the autopsy records maintained by the coroner are not considered "public records" and are exempted from release to the general public. R.C. 313.10 provides in pertinent part that:

(A)(2) Except as otherwise provided in division (D) or (E) of this section, the following records in a coroner's office are not public records:

(a) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(b) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Suicide notes;

(d) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under section 313.091 of the Revised Code;

(e) Records of a deceased individual that are confidential law enforcement investigatory records as defined in section 149.43 of the Revised Code;

(f) Laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16.

* * *

(C) (1) The coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to a person who makes a written request as the next of kin of the decedent. The following persons may make a request pursuant to this division as the next of kin of a decedent:

(c) * * * , the parents of the decedent, with each parent having an independent right to make a request pursuant to this division

* * *

(G) As used in this section:

adequate remedy in the ordinary course of the law to obtain the autopsy records from the coroner. Thus, we must determine whether the coroner possesses a clear legal duty to provide the complete autopsy file to Clay.

{¶5} The coroner, in an attempt to establish that it possesses no duty to provide Clay with the complete autopsy file, argues that when R.C. 149.43 (Ohio Public Records Statute), R.C. 2105.19 (Ohio Slayer Statute), and R.C. 313.10 (Coroner Public Records Statute) are read in *pari materia*, it is clear that no duty exists to provide Clay with the complete autopsy file. Specifically, the coroner argues in its motion for summary judgment that:

The body of laws governing the same subject must be read in *pari materia*. *In re Z.R.,_Ohio St.3d_*, 2015-Ohio-3306, ¶ 19, citing *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, ¶ 7. The General Assembly has clearly and specifically limited incarcerated persons' access to investigative records concerning their cases. Furthermore, the law clearly provides that a person, such as the Relator, who has caused the death of another shall not "in any way benefit by the death." R.C. 2105.19(A). It would be a brutal irony if, as a consequence of his having murdered his own child, Relator Clay had significantly greater access to confidential investigative records concerning the murder for which he is incarcerated than other incarcerated persons have. The Court should assume that the General Assembly intended a just and reasonable result when it enacted R.C. 313.10(C)(1)(c), and find that in light of the specific limitations on incarcerated persons' access to records concerning their own criminal investigative files, and in light of the prohibition in Ohio's Slayer Statute from Relator Clay benefitting from having caused his own daughter's death, the Cuyahoga County Medical Examiner does not have a clear legal duty to send the x-rays and photographs of Relator's victim's autopsy, or the coroner's investigative notes and findings to Mansfield Correctional Institution for Relator Clay.

{¶6} The doctrine of law, that the body of laws governing the same subject must be read in *pari materia*, is not applicable to this original action, because only the body of laws governing the same subject must be read in *pari materia*.

In re C.W., supra.

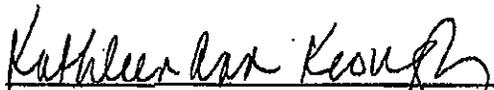
{¶7} R.C. 149.43 deals with public records and is not applicable herein, because the complete autopsy file is not a public record. In addition, Clay does not rely upon R.C. 149.43 in his complaint for a writ of mandamus.

{¶8} R.C. 2105.19 prevents an individual from financially benefitting from the death of a decedent, if the person caused the death of the decedent. Clay is not seeking any financial gain through his complaint for a writ of mandamus. Neither R.C. 149.43 or 2105.19 are statutes that are related to R.C. 313.10 and thus are not required to be read in *para materia*. Therefore, we find that pursuant to R.C. 313.10(C)(1), the coroner possesses a clear legal duty to provide Clay with the complete autopsy file. *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437, 855 N.E.2d 35; *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999).

{¶9} Accordingly, we deny the coroner's motion for summary judgment and issue a writ of mandamus on behalf of Clay. Within a reasonable period of time, the coroner is ordered to provide Clay with the complete autopsy file created with regard to the death of his child, Cuyahoga Coroner Case No. IN00260612 -

Autopsy No. AU000082729, per R.C. 313.10(C)(1) and 313.10(G)(1). Costs to the coroner. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of its entry upon the journal as required by Civ.R. 68(B).

{¶ 10} Writ granted.



KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MELODY J. STEWART, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

FEB 03 2016

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By  Deputy

1.47 Presumptions in enactment of statutes.

In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state and of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended;
- (D) A result feasible of execution is intended.

Effective Date: 01-03-1972

1.62 References to officers, authorities and resolutions in county that has adopted a charter.

As used in the Revised Code, unless the context of a section does not permit the following or unless expressly provided otherwise in a section:

(A) References to particular county officers, boards, commissions, and authorities mean, in the case of a county that has adopted a charter under Article X, Ohio Constitution, the officer, board, commission, or authority of that county designated by or pursuant to the charter to exercise the same powers or perform the same acts, duties, or functions that are to be exercised or performed under the applicable section of the Revised Code by officers, boards, commissions, or authorities of counties that have not adopted a charter. If any section of the Revised Code requires county representation on a board, commission, or authority by more than one county officer, and the charter vests the powers, duties, or functions of each county officer representing the county on the board, commission, or authority in fewer officers or in only a single county officer, the county officers or officer shall succeed to the representation of only one of the county officers on the board, commission, or authority. If any vacancy in the representation of the county on the board, commission, or authority remains, the taxing authority of the county shall adopt a resolution to fill the vacancy.

(B) References to resolutions mean, in the case of a county that has adopted a charter under Article X, Ohio Constitution, the appropriate form of legislation permitted by or pursuant to the charter.

Amended by 128th General Assembly File No.31, HB 313, §1, eff. 7/7/2010.

Effective Date: 03-12-2001

149.43 Availability of public records for inspection and copying.

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

(p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services

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employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(y) Records listed in section 5101.29 of the Revised Code;

(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;

(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;

(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

- (a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;
- (b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;
- (c) Specific confidential investigatory techniques or procedures or specific investigatory work product;
- (d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information" means any information that discloses any of the following about a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation:

- (a) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or an investigator of the bureau of criminal identification and investigation, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation resides;

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- (b) Information compiled from referral to or participation in an employee assistance program;
- (c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;
- (d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer;
- (e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's compensation unless the amount of the deduction is required by state or federal law;
- (f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;
- (g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

As used in divisions (A)(7) and (B)(9) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in divisions (A)(7) and (B)(9) of this section, "correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

As used in divisions (A)(7) and (B)(9) of this section, "youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

As used in divisions (A)(7) and (B)(9) of this section, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A)(7) and (B)(9) of this section, "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

As used in divisions (A)(7) and (B)(9) of this section, "investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

(8) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

- (a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;
- (b) The social security number, birth date, or photographic image of a person under the age of eighteen;
- (c) Any medical record, history, or information pertaining to a person under the age of eighteen;
- (d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.

(B)

(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is

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exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person chooses to obtain a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of

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the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking a copy of the public record to make the copies of the public record.

(7) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)

(a) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee,

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firefighter, EMT, or investigator of the bureau of criminal identification and investigation and, if the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(C)

(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C) (1) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requestor shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand

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dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(2)

(a) If the court issues a writ of mandamus that orders the public office or the person responsible for the public record to comply with division (B) of this section and determines that the circumstances described in division (C)(1) of this section exist, the court shall determine and award to the relator all court costs.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, the court may award reasonable attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section when either of the following applies:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(c) Court costs and reasonable attorney's fees awarded under this section shall be construed as remedial and not punitive. Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. The court may reduce an award of attorney's fees to the relator or not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B)

of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in division (C)(2)(c)(i) of this section would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)

(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. In addition, all public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

(2) The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)

(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 130th General Assembly File No. TBD, HB 663, §3, eff. 3/20/2015.

Amended by 130th General Assembly File No. TBD, HB 663, §1, eff. 3/23/2015.

Amended by 130th General Assembly File No. 56, SB 23, §1, eff. 3/20/2015.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 129, SB 314, §1, eff. 9/28/2012.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No. 43, HB 64, §1, eff. 10/17/2011.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 02-12-2004; 04-27-2005; 07-01-2005; 10-29-2005; 03-30-2007; 2006 HB9 09-29-2007; 2008 HB214 05-14-2008; 2008 SB248 04-07-2009

Related Legislative Provision: See 129th General Assembly File No. 131, SB 337, §4

313.10 Records to be public - certified copies as evidence.

(A)

(1) Except as otherwise provided in this section, the records of the coroner who has jurisdiction over the case, including, but not limited to, the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the office of the coroner under division (A) of section 313.13 of the Revised Code, made personally by the coroner or by anyone acting under the coroner's direction or supervision, are public records. Those records, or transcripts or photostatic copies of them, certified by the coroner shall be received as evidence in any criminal or civil action or proceeding in a court in this state, as to the facts contained in those records. The coroner of the county where the death was pronounced shall be responsible for the release of all public records relating to that death.

(2) Except as otherwise provided in division (D) or (E) of this section, the following records in a coroner's office are not public records:

(a) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(b) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Suicide notes;

(d) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under section 313.091 of the Revised Code;

(e) Records of a deceased individual that are confidential law enforcement investigatory records as defined in section 149.43 of the Revised Code;

(f) Laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16.

(3) In the coroner's discretion, photographs of a decedent may be used for medical, legal, or educational purposes.

(B) All records in the coroner's office that are public records are open to inspection by the public, and any person may receive a copy of any such record or part of it upon demand in writing, accompanied by payment of a record retrieval and copying fee, at the rate of twenty-five cents per page or a minimum fee of one dollar.

(C)

(1) The coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to a person who makes a written request as the next of kin of the decedent. The following persons may make a request pursuant to this division as the next of kin of a decedent:

(a) The surviving spouse of the decedent;

(b) If there is no surviving spouse, or if the surviving spouse has died without having made a request pursuant to this division, any child of the decedent over eighteen years of age, with each child over eighteen years of age having an independent right to make a request pursuant to this division;

(c) If there is no surviving spouse or child over eighteen years of age, or if the surviving spouse and all children over eighteen years of age have died without having made a request pursuant to this division, the parents of the decedent, with each parent having an independent right to make a request pursuant to this division;

(d) If there is no surviving spouse, child over eighteen years of age, or parents of the decedent, or if all have died without having made a request pursuant to this division, the brothers and sisters of the decedent, whether of the whole or the half blood, with each having an independent right to make a request pursuant to this division.

(2) If there is no surviving person who may make a written request as next of kin for a copy of the full and complete records of the coroner pursuant to division (C)(1) of this section, or if all next of kin of the decedent have died without having made a request pursuant to that division, the coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to the representative of the estate of the decedent who is the subject of the records upon written request made by the representative.

(D) A journalist may submit to the coroner a written request to view preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent made by the coroner or by anyone acting under the coroner's discretion or supervision. The request shall include the journalist's name and title and the name and address of the journalist's employer and state that the granting of the request would be in the best interest of the public. If a journalist submits a written request to the coroner to view the records described in this division, the coroner shall grant the journalist's request. The journalist shall not copy the preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent.

(E)

(1) An insurer may submit to the coroner a written request to obtain a copy of the full and complete records of the coroner with respect to a deceased person. The request shall include the name of the deceased person, the type of policy to which the written request relates, and the name and address of the insurer.

(2) If an insurer submits a written request to the coroner to obtain a copy of records pursuant to division (E)(1) of this section, the coroner shall grant that request.

(3) Upon the granting of a written request to obtain a copy of records by the coroner, the insurer may utilize the records for the following purposes:

(a) To investigate any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person;

(b) To determine coverage for any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person;

(c) To determine the insurer's liability for any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person.

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(4) Prior to the delivery of records that are the subject of a request made pursuant to division (E)(1) of this section, the coroner may require the insurer who submitted the written request for the records to provide a payment to the coroner of a record retrieval and copying fee at the rate of twenty-five cents per page or a minimum fee of one dollar.

(5) Any records produced by the coroner in response to a written request under division (E)(1) of this section shall remain in the care, custody, and control of the insurer and its employees or representatives at all times. The insurer may not release or disclose the records to any other person unless any of the following apply:

(a) The release of the records is reasonably necessary to further a purpose described in division (E)(3) of this section.

(b) A court of competent jurisdiction orders the insurer to produce the records.

(c) The insurer is required to produce the records in response to a civil or criminal subpoena.

(d) The insurer is responding to a request for the records from a law enforcement agency, the department of insurance or a department of insurance from another state, or another governmental authority.

(F) The coroner may contact the decedent's next of kin to inform the next of kin that a journalist or an insurer has submitted a written request pursuant to division (D) or (E) of this section and whether the coroner has granted the journalist's or the insurer's request.

(G) As used in this section:

(1) "Full and complete records of the coroner" includes, but is not limited to, the following:

(a) The detailed descriptions of the observations written by the coroner or by anyone acting under the coroner's direction or supervision during the progress of an autopsy and the conclusions drawn from those observations that are filed in the office of the coroner under division (A) of section 313.13 of the Revised Code;

(b) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(d) Suicide notes;

(e) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under section 313.091 of the Revised Code;

(f) Records of a deceased individual that are confidential law enforcement investigatory records as defined in section 149.43 of the Revised Code;

(g) Laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16.

(2) "Insurer" has the same meaning as in section 3901.07 of the Revised Code.

(3) "Journalist" has the same meaning as in section 149.43 of the Revised Code.

Effective Date: 02-13-2001; 08-17-2006; 2008 HB471 04-07-2009

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(126th General Assembly)
(Amended Substitute House Bill Number 235)

AN ACT

To amend sections 313.05, 313.08, 313.10, 325.17, 3705.16, 3705.29, 3705.99, 3901.21, 4705.01, and 4731.053 and to enact sections 313.123 and 313.23 of the Revised Code to make changes to the Coroner's Law and associated provisions of the Death and Fetal Death Certificate Law, to require that the rules of the State Medical Board allow a coroner's investigator who is not a physician to recite facts permitting a physician to pronounce a person dead without a personal examination, to permit a journalist or insurer to request certain information from the coroner, to allow a coroner to practice as an attorney at law in a court except under specified circumstances, and to specify who may view an autopsy.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 313.05, 313.08, 313.10, 325.17, 3705.16, 3705.29, 3705.99, 3901.21, 4705.01, and 4731.053 be amended and sections 313.123 and 313.23 of the Revised Code be enacted to read as follows:

Sec. 313.05. (A)(1) The coroner may appoint, in writing, deputy coroners, who shall be licensed physicians of good standing in their profession, one of whom may be designated as the chief deputy coroner. The coroner may also may appoint pathologists as deputy coroners, who shall assist in doing may perform autopsies, make pathological and chemical examinations, and perform other duties as directed by the coroner or recommended by the prosecuting attorney. The coroner may appoint any necessary technicians.

The coroner may contract for the services of deputy coroners to aid the coroner in the execution of the coroner's powers and duties. Contracts for the services of deputy coroners are exempt from any competitive bidding requirements of the Revised Code.

(2) The coroner may appoint, in writing, one or more secretaries and an official stenographer, who shall record the testimony of witnesses in attendance upon the coroner's inquest, preserve and file properly indexed records of all official reports, acts, and communications of the office, and perform other services as required by the coroner.

~~In counties where a coroner's office, laboratory, and county morgue are maintained, the~~ (3) The coroner may appoint clerks, stenographers, custodians, and investigators, and shall define their duties.

(4) For the performance of their duties the, deputy coroners, pathologists servng as deputy coroners, and technicians, stenographers, secretaries, clerks, custodians, and investigators shall receive salaries fixed by the coroner and payable from the county treasury upon the warrant of the county auditor. The compensation shall not exceed, in the aggregate, the amount fixed by the board of county commissioners for the coroner's office.

(B) A coroner may appoint, as a deputy coroner, as a pathologist serving as a deputy coroner, or as a technician, stenographer, secretary, clerk, custodian, investigator, or other employee, a person who is an associate of, or who is employed by, the coroner or a deputy coroner in the private practice of medicine in a partnership, professional association, or other medical business arrangement.

Sec. 313.08. (A) In counties in which a county morgue is maintained, the coroner shall be the official custodian of the morgue.

In all cases of the finding of the body or remains of a deceased person within a county in which a county morgue is maintained, when the identity of the deceased person is unknown, or the deceased person's relatives or other persons entitled to the custody of the body or remains of the deceased person are unknown or not present, the body or remains shall be removed to the county morgue, where it shall be held for identification and disposal.

(B) If the body or remains of a deceased person are not identified, a coroner shall do all of the following prior to disposing of the body or remains:

(1) Take the fingerprints of the body or remains of the deceased person, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation;

(2) Take or cause to be taken one or more photographs of the body or remains of the deceased person;

(3) Collect in a medically approved manner a DNA specimen from the body or remains of the deceased person;

(4) Promptly cause the fingerprints, the photographs, and the DNA specimen to be forwarded to the bureau of criminal identification and investigation for inclusion in the unidentified person database in accordance with procedures established by the superintendent of the bureau under division (H) of section 109.573 of the Revised Code. The bureau shall provide the fingerprint forms, specimen vials, mailing tubes, labels, postage, and instruction needed for the collection and forwarding to the bureau of the fingerprints and the DNA specimen and for the forwarding to the bureau of the photographs.

(C) Upon the request of a coroner who has the duty to take, or cause the taking of, fingerprints and photographs under divisions (B)(1) and (2) of this section, the bureau of criminal identification and investigation shall take, or assist in the taking of, the required fingerprints and photographs.

(D) The coroner may submit any evidence gathered in the investigation of a death to the bureau of criminal identification and investigation for assistance in determining whether the death resulted from criminal activity. The bureau shall assist in the evaluation of evidence submitted under this division.

(E) As used in this section, "DNA specimen" and "unidentified person database" have the same meanings as in section 109.573 of the Revised Code.

Sec. 313.10. ~~The (A)(1) Except as otherwise provided in this section, the records of the coroner, including, but not limited to, the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the office of the coroner under division (A) of section 313.13 of the Revised Code, made personally by the coroner or by anyone acting under the coroner's direction or supervision, are public records, and these, Those records, or transcripts or photostatic copies of them, certified by the coroner, shall be received as evidence in any criminal or civil action or proceeding in a court in this state, as to the facts contained in those records.~~

(2) Except as otherwise provided in division (D) or (E) of this section, the following records in a coroner's office are not public records:

(a) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(b) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Suicide notes;

(d) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under section 313.091 of the Revised Code.

(3) In the coroner's discretion, photographs of a decedent may be used for medical, legal, or educational purposes.

~~Except for medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under section 313.091 of the Revised Code, all (B) All records in the coroner's office shall be that are public records are open to inspection by the public, and any person may receive a copy of any such record or part of it upon demand in writing, accompanied by payment of the transcript a record retrieval and copying fee, at the rate of fifteen twenty-five cents per hundred words, page or a minimum fee of one dollar.~~

(C)(1) The coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to a person who makes a written request as the next of kin of the decedent. The following persons may make a request pursuant to this division as the next of kin of a decedent:

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(a) The surviving spouse of the decedent;

(b) If there is no surviving spouse, or if the surviving spouse has died without having made a request pursuant to this division, any child of the decedent over eighteen years of age, with each child over eighteen years of age having an independent right to make a request pursuant to this division;

(c) If there is no surviving spouse or child over eighteen years of age, or if the surviving spouse and all children over eighteen years of age have died without having made a request pursuant to this division, the parents of the decedent, with each parent having an independent right to make a request pursuant to this division;

(d) If there is no surviving spouse, child over eighteen years of age, or parents of the decedent, or if all have died without having made a request pursuant to this division, the brothers and sisters of the decedent, whether of the whole or the half blood, with each having an independent right to make a request pursuant to this division.

(2) If there is no surviving person who may make a written request as next of kin for a copy of the full and complete records of the coroner pursuant to division (C)(1) of this section, or if all next of kin of the decedent have died without having made a request pursuant to that division, the coroner shall provide a copy of the full and complete records of the coroner with respect to a decedent to the representative of the estate of the decedent who is the subject of the records upon written request made by the representative.

(D) A journalist may submit to the coroner a written request to view preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent made by the coroner or by anyone acting under the coroner's discretion or supervision. The request shall include the journalist's name and title and the name and address of the journalist's employer and state that the granting of the request would be in the best interest of the public. If a journalist submits a written request to the coroner to view the records described in this division, the coroner shall grant the journalist's request. The journalist shall not copy the preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent.

(E)(1) An insurer may submit to the coroner a written request to obtain a copy of the full and complete records of the coroner with respect to a deceased person. The request shall include the name of the deceased person, the type of policy to which the written request relates, and the name and address of the insurer.

(2) If an insurer submits a written request to the coroner to obtain a copy of records pursuant to division (E)(1) of this section, the coroner shall grant that request.

(3) Upon the granting of a written request to obtain a copy of records by the coroner, the insurer may utilize the records for the following purposes:

(a) To investigate any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person;

(b) To determine coverage for any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person;

(c) To determine the insurer's liability for any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person.

(4) Prior to the delivery of records that are the subject of a request made pursuant to division (E)(1) of this section, the coroner may require the insurer who submitted the written request for the records to provide a payment to the coroner of a record retrieval and copying fee at the rate of twenty-five cents per page or a minimum fee of one dollar.

(5) Any records produced by the coroner in response to a written request under division (E)(1) of this section shall remain in the care, custody, and control of the insurer and its employees or representatives at all times. The insurer may not release or disclose the records to any other person unless any of the following apply:

(a) The release of the records is reasonably necessary to further a purpose described in division (E)(3) of this section.

(b) A court of competent jurisdiction orders the insurer to produce the records.

(c) The insurer is required to produce the records in response to a civil or criminal subpoena.

(d) The insurer is responding to a request for the records from a law enforcement agency, the department of insurance or a department of insurance from another state, or another governmental authority.

(f) The coroner may contact the decedent's next of kin to inform the next of kin that a journalist or an insurer has submitted a written request pursuant to division (D) or (E) of this section and whether the coroner has granted the journalist's or the insurer's request.

(G) As used in this section:

(1) "Full and complete records of the coroner" includes, but is not limited to, the following:

(a) The detailed descriptions of the observations written by the coroner or by anyone acting under the coroner's direction or supervision during the progress of an autopsy and the conclusions drawn from those observations that are filed in the office of the coroner under division (A) of section 313.13 of the Revised Code;

(b) Preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision;

(c) Photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision;

(d) Suicide notes;

(e) Medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under section 313.091 of the Revised Code.

(2) "Insurer" has the same meaning as in section 3901.07 of the Revised Code.

(3) "Journalist" has the same meaning as in section 149.43 of the Revised Code.

Sec. 313.123. (A)(1) As used in this chapter, "autopsy" means the external and internal examination of the body of a deceased person, including, but not limited to, gross visual inspection and dissection of the body and its internal organs, photographic or narrative documentation of findings, microscopic, radiological, toxicological, chemical, or other laboratory analyses performed in the discretion of the examining individual upon tissues, organs, blood, other bodily fluids, gases, or any other specimens and the retention for diagnostic and documentary purposes of tissues, organs, blood, other bodily fluids, gases, or any other specimens as the examining individual considers necessary to establish and defend against challenges to the cause and manner of death of the deceased person.

(2) As used in this section, "DNA specimen" has the same meaning as in section 109.573 of the Revised Code.

(B)(1) Except as otherwise provided in division (B)(2) of this section, retained tissues, organs, blood, other bodily fluids, gases, or any other specimens from an autopsy are medical waste and shall be disposed of in accordance with applicable federal and state laws, including any protocol rules adopted under section 313.122 of the Revised Code.

(2) If an autopsy is performed on a deceased person and pursuant to section 313.131 of the Revised Code the coroner has reason to believe that the autopsy is contrary to the deceased person's religious beliefs, the coroner shall not remove any specimens, including, but not limited to, tissues, organs, blood, or other bodily fluids, from the body of the deceased person unless removing those specimens from the body of the deceased person is a compelling public necessity. Except as otherwise provided in division (B)(3) of this section, if the coroner removes any specimens from the body of the deceased person, the coroner shall return the specimens, as soon as is practicable, to the person who has the right to the disposition of the body.

(3) The coroner may retain a DNA specimen for diagnostic, evidentiary, or confirmatory purposes.

(C) A cause of action shall not lie against any employee of a coroner's office for requesting, ordering, or performing an autopsy in good faith under the authority of this chapter.

Sec. 313.23. (A) As used in this section:

(1) "Interested person" means an employee of the coroner's office, a physician, dentist, nurse, professor at a medical school, medical student, medical resident, nursing student, an employee of a recovery agency, a member of a law enforcement agency, or any other person the coroner, in the coroner's discretion, determines is appropriate.

(2) "Recovery agency" has the same meaning as in section 2108.01 of the Revised Code.

(B) The coroner may allow an interested person to view an autopsy of a decedent without the interested person receiving permission to view the decedent's autopsy from the decedent's next of kin.

(C) No person who is under eighteen years of age and who is not an interested person may view an autopsy.

Sec. 325.17. The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, shall fix the compensation of such those employees and discharge them, and shall file certificates of such that action with the county auditor. ~~Such~~ The employees' compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such that office. When so fixed, the compensation of each such deputy, assistant, bookkeeper, clerk, and other employee shall be paid biweekly from the county treasury, upon the warrant of the county auditor. The amount of the biweekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount such the employee would receive if he the employee were paid semi-monthly. ~~Such~~

Each of such the officers mentioned in section 325.27 of the Revised Code may require such of his the officer's employees as he deems the officer considers proper to give bond to the state, in an amount to be fixed by such the officer, with sureties approved by him the officer, conditioned for the faithful performance of their official duties. Such The bond, with the approval of such the officer indorsed thereon and endorsed on it, shall be deposited with the county treasurer and kept in his the treasurer's office.

From moneys appropriated for their offices, the officers mentioned in section 325.27 of the Revised Code may contract for the services of fiscal and management consultants to aid them in the execution of their powers and duties.

Sec. 3705.16. (A) Each death or fetal death that occurs in this state shall be registered with the local registrar of vital statistics of the district in which the death or fetal death occurred, by the funeral director or other person in charge of the final disposition of the remains. The personal and statistical information in the death or fetal death certificate shall be obtained from the best qualified persons or sources available, by the funeral director or other person in charge of the final disposition of the remains. The statement of facts relating to the disposition of the body and information relative to the armed services referred to in section 3705.19 of the Revised Code shall be signed by the funeral director or other person in charge of the final disposition of the remains. The

(B) The funeral director or other person in charge of the final disposition of the remains shall then present the death or fetal death certificate to the attending physician or of the decedent, the coroner, or the medical examiner, as appropriate for certification of the cause of death. The If a death or fetal death occurs under any circumstances mentioned in section 313.12 of the Revised Code, the coroner in the county in which the death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, shall certify the cause of death unless that death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and that person, after a preliminary examination, declined to assert jurisdiction with respect to the death or fetal death. A physician other than the coroner in the county in which a death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, may certify only those deaths that occur under natural circumstances.

The medical certificate of death shall be completed and signed by the physician who attended the deceased decedent or by the coroner or medical examiner, as appropriate, within forty-eight hours after the death or fetal death. The A coroner or medical examiner may satisfy the requirement of signing a death medical certificate showing the cause of death or fetal death as pending either by stamping it with a stamp of the coroner's or medical examiner's signature or by signing it in the coroner's or medical examiner's own hand, but the coroner or medical examiner shall sign a death any other medical certificate of death or supplementary medical certification in the coroner's or medical examiner's own hand. Any

(C) Any death certificate registered pursuant to this section shall contain the social security number of the decedent, if available. A social security number obtained under this section is a public record under section 149.43 of the Revised Code.

Sec. 3705.29. (A) No person shall do any of the following:

(1) Purposely make any false statement in a certificate, record, or report required by this chapter or in an application or amendment of it, or purposely supply false information with the intent that such that information be used in the preparation of any such report, record, or certificate, or amendment of it;

(2) Without lawful authority and with intent to deceive, counterfeit, alter, amend, or mutilate any certificate, record, or report required by this chapter or any certified copy of it;

(3) Purposely obtain, possess, use, sell, furnish, or attempt to obtain, possess, use, sell, or furnish to another for the purpose of deception any certificate, record, or report required by this chapter or any certified copy of it, or any certificate, record, or report that is counterfeit, altered, or amended or false in whole or part;

(4) Purposely obtain, possess, use, sell, furnish, or attempt to obtain, possess, use, sell, or furnish to another for the purpose of deception any certificate, record, or report required by this chapter, or any certified copy of it, that relates to the birth of another person, whether living or dead;

(5) Without lawful authority, possess any certificate, record, or report required by this chapter or any copy of such a certificate, record, or report, knowing it to have been stolen or otherwise unlawfully obtained.

(B) No person employed by the office of vital statistics or a local registrar shall purposely furnish or possess a birth record or certified copy of a birth record with intent that it be used for deception.

(C) No person shall do any of the following:

(1) Purposely refuse to provide information required by this chapter or rules adopted under it;

(2) Purposely transport out of this state or accept for interment or other disposition a dead body without a permit required by this chapter;

(3) Knowingly prepare, issue, sell, or give any record or certificate that is alleged to be an original vital record or a certified copy of a vital record if the person knows or has reason to know that it is not an original vital record or a certified copy of a vital record;

(4) Refuse to comply with the requirements of this chapter or violate any of the provisions of this chapter.

(D) No officer or employee of the department of health shall knowingly reveal or provide any information contained in an adoption file maintained by the department under section 3705.12 of the Revised Code to any person, or knowingly reveal or provide the contents of an adoption file to any person, unless authorized to do so by section 3705.12 of the Revised Code.

(E) If a death or fetal death occurs under any circumstances mentioned in section 313.12 of the Revised Code, the coroner of the county in which the death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, shall certify the cause of that death unless the death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and that person, after a preliminary examination, declined to assert jurisdiction with respect to the death or fetal death.

(F) No physician other than the coroner in the county in which a death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, may certify any death or fetal death that occurs under any circumstances other than natural.

(G) If a death or fetal death occurs under any circumstances mentioned in section 313.12 of the Revised Code, no person shall knowingly present a death or fetal death certificate for the purpose of obtaining certification of the cause of death to any physician other than the coroner in the county in which the death or fetal death occurred, or to a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, unless that death or fetal death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and that person, after a preliminary examination, declined to assert jurisdiction with respect to the death or fetal death.

(H) No person, with intent to defraud or knowing that the person is facilitating a fraud, shall do either of the following:

(1) Certify a cause of death in violation of the prohibition of division (E) or (F) of this section;

(2) Obtain or attempt to obtain a certification of the cause of a death or fetal death in violation of the prohibition of division (G) of this section.

Sec. 3705.99. (A) Whoever violates division (A) or, (B), or (H) of section 3705.29 of the Revised Code shall be fined not more than ten thousand dollars or incarcerated for a term of not more than five years, or both.

(B) Whoever violates division (C), (E), (F), or (G) of section 3705.29 of the Revised Code shall be fined not more than one thousand dollars or incarcerated for a term of not more than one year, or both.

(C) Whoever violates division (D) of section 3705.29 of the Revised Code is guilty of a misdemeanor of the third degree.

Sec. 3901.21. The following are hereby defined as unfair and deceptive acts or practices in the business of insurance:

(A) Making, issuing, circulating, or causing or permitting to be made, issued, or circulated, or preparing with intent to so use, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer as shown by the last preceding verified statement made by it to the insurance department of this state, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation or incomplete comparison to any person for the purpose of inducing or tending to induce such person to purchase, amend, lapse, forfeit, change, or surrender insurance.

Any written statement concerning the premiums for a policy which refers to the net cost after credit for an assumed dividend, without an accurate written statement of the gross premiums, cash values, and dividends based on the insurer's current dividend scale, which are used to compute the net cost for such policy, and a prominent warning that the rate of dividend is not guaranteed, is a misrepresentation for the purposes of this division.

(B) Making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, or preparing with intent to so use, an advertisement, announcement, or statement containing any assertion, representation, or statement, with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(C) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating, or preparing with intent to so use, any statement, pamphlet, circular, article, or literature, which is false as to the financial condition of an insurer and which is calculated to injure any person engaged in the business of insurance.

(D) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer.

Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer, or mutilating, destroying, suppressing, withholding, or concealing any of its records.

(E) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock or benefit certificates or shares in any common-law corporation or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(F) Making or permitting any unfair discrimination among individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(G)(1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities, or other obligations of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(2) Nothing in division (F) or division (G)(1) of this section shall be construed as prohibiting any of the following practices: (a) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders; (b) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; (c) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(H) Making, issuing, circulating, or causing or permitting to be made, issued, or circulated, or preparing with intent to so use, any statement to the effect that a policy of life insurance is, is the equivalent of, or represents shares of capital stock or any rights or options to subscribe for or otherwise acquire any such shares in the life insurance company issuing that policy or any other company.

(I) Making, issuing, circulating, or causing or permitting to be made, issued or circulated, or preparing with intent to so issue, any statement to the effect that payments to a policyholder of the principal amounts of a pure endowment are other than payments of a specific benefit for which specific premiums have been paid.

(J) Making, issuing, circulating, or causing or permitting to be made, issued, or circulated, or preparing with intent to so use, any statement to the effect that any insurance company was required to change a policy form or related material to comply with Title XXXIX of the Revised Code or any regulation of the superintendent of insurance, for the purpose of inducing or intending to induce any policyholder or prospective policyholder to purchase, amend, lapse, forfeit, change, or surrender insurance.

(K) Aiding or abetting another to violate this section.

(L) Refusing to issue any policy of insurance, or canceling or declining to renew such policy because of the sex or marital status of the applicant, prospective insured, insured, or policyholder.

(M) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, other than life insurance, or in the benefits payable thereunder, or in underwriting standards and practices or eligibility requirements, or in any of the terms or conditions of such contract, or in any other manner whatever.

(N) Refusing to make available disability income insurance solely because the applicant's principal occupation is that of managing a household.

(O) Refusing, when offering maternity benefits under any individual or group sickness and accident insurance policy, to make maternity benefits available to the policyholder for the individual or individuals to be covered under any comparable policy to be issued for delivery in this state, including family members if the policy otherwise provides coverage for family members. Nothing in this division shall be construed to prohibit an insurer from imposing a reasonable waiting period for such benefits under an individual sickness and accident insurance policy issued to an individual who is not a federally eligible individual or a nonemployer-related group sickness and accident insurance policy, but in no event shall such waiting period exceed two hundred seventy days.

For purposes of division (O) of this section, "federally eligible individual" means an eligible individual as defined in 45 C.F.R. 148.103.

(P) Using, or permitting to be used, a pattern settlement as the basis of any offer of settlement. As used in this division, "pattern settlement" means a method by which liability is routinely imputed to a claimant without an investigation of the particular occurrence upon which the claim is based and by using a predetermined formula for the assignment of liability arising out of occurrences of a similar nature. Nothing in this division shall be construed to prohibit an insurer from determining a claimant's liability by applying formulas or guidelines to the facts and circumstances disclosed by the insurer's investigation of the particular occurrence upon which a claim is based.

(Q) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life or sickness and accident insurance or annuity coverage available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. With respect to all other conditions, including the underlying cause of blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated actuarial experience as are sighted persons. Refusal to insure includes, but is not limited to, denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the eyesight of the insured is lost. However, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such conditions existed at the time the policy was issued. To the extent that the provisions of this division may appear to conflict with any provision of section 3999.16 of the Revised Code, this division applies.

(R)(1) Directly or indirectly offering to sell, selling, or delivering, issuing for delivery, renewing, or using or otherwise marketing any policy of insurance or insurance product in connection with or in any way related to the grant of a student loan guaranteed in whole or in part by an agency or commission of this state or the United States, except insurance that is required under federal or state law as a condition for obtaining such a loan and the premium for which is included in the fees and charges applicable to the loan; or, in the case of an insurer or insurance agent, knowingly permitting any lender making such loans to engage in such acts or practices in connection with the insurer's or agent's insurance business.

(2) Except in the case of a violation of division (G) of this section, division (R)(1) of this section does not apply to either of the following:

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(a) Acts or practices of an insurer, its agents, representatives, or employees in connection with the grant of a guaranteed student loan to its insured or the insured's spouse or dependent children where such acts or practices take place more than ninety days after the effective date of the insurance;

(b) Acts or practices of an insurer, its agents, representatives, or employees in connection with the solicitation, processing, or issuance of an insurance policy or product covering the student loan borrower or the borrower's spouse or dependent children, where such acts or practices take place more than one hundred eighty days after the date on which the borrower is notified that the student loan was approved.

(S) Denying coverage, under any health insurance or health care policy, contract, or plan providing family coverage, to any natural or adopted child of the named insured or subscriber solely on the basis that the child does not reside in the household of the named insured or subscriber.

(T)(1) Using any underwriting standard or engaging in any other act or practice that, directly or indirectly, due solely to any health status-related factor in relation to one or more individuals, does either of the following:

(a) Terminates or fails to renew an existing individual policy, contract, or plan of health benefits, or a health benefit plan issued to an employer, for which an individual would otherwise be eligible;

(b) With respect to a health benefit plan issued to an employer, excludes or causes the exclusion of an individual from coverage under an existing employer-provided policy, contract, or plan of health benefits.

(2) The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code for purposes of implementing division (T)(1) of this section.

(3) For purposes of division (T)(1) of this section, "health status-related factor" means any of the following:

(a) Health status;

(b) Medical condition, including both physical and mental illnesses;

(c) Claims experience;

(d) Receipt of health care;

(e) Medical history;

(f) Genetic information;

(g) Evidence of insurability, including conditions arising out of acts of domestic violence;

(h) Disability.

(U) With respect to a health benefit plan issued to a small employer, as those terms are defined in section 3924.01 of the Revised Code, negligently or willfully placing coverage for adverse risks with a certain carrier, as defined in section 3924.01 of the Revised Code.

(V) Using any program, scheme, device, or other unfair act or practice that, directly or indirectly, causes or results in the placing of coverage for adverse risks with another carrier, as defined in section 3924.01 of the Revised Code.

(W) Failing to comply with section 3923.23, 3923.231, 3923.232, 3923.233, or 3923.234 of the Revised Code by engaging in any unfair, discriminatory reimbursement practice.

(X) Intentionally establishing an unfair premium for, or misrepresenting the cost of, any insurance policy financed under a premium finance agreement of an insurance premium finance company.

(Y)(1)(a) Limiting coverage under, refusing to issue, canceling, or refusing to renew, any individual policy or contract of life insurance, or limiting coverage under or refusing to issue any individual policy or contract of health insurance, for the reason that the insured or applicant for insurance is or has been a victim of domestic violence;

(b) Adding a surcharge or rating factor to a premium of any individual policy or contract of life or health insurance for the reason that the insured or applicant for insurance is or has been a victim of domestic violence;

(c) Denying coverage under, or limiting coverage under, any policy or contract of life or health insurance, for the reason that a claim under the policy or contract arises from an incident of domestic violence;

(d) Inquiring, directly or indirectly, of an insured under, or of an applicant for, a policy or contract of life or health insurance, as to whether the insured or applicant is or has been a victim of domestic violence, or inquiring as to whether the insured or applicant has sought shelter or protection from domestic violence or has sought medical or psychological treatment as a victim of domestic violence.

(2) Nothing in division (Y)(1) of this section shall be construed to prohibit an insurer from inquiring as to, or from underwriting or rating a risk on the basis of, a person's physical or mental condition, even if the condition has been caused by domestic violence, provided that all of the following apply:

(a) The insurer routinely considers the condition in underwriting or in rating risks, and does so in the same manner for a victim of domestic violence as for an insured or applicant who is not a victim of domestic violence;

(b) The insurer does not refuse to issue any policy or contract of life or health insurance or cancel or refuse to renew any policy or contract of life insurance, solely on the basis of the condition, except where such refusal to issue, cancellation, or refusal to renew is based on sound actuarial principles or is related to actual or reasonably anticipated experience;

(c) The insurer does not consider a person's status as being or as having been a victim of domestic violence, in itself, to be a physical or mental condition;

(d) The underwriting or rating of a risk on the basis of the condition is not used to evade the intent of division (Y)(1) of this section, or of any other provision of the Revised Code.

(3)(a) Nothing in division (Y)(1) of this section shall be construed to prohibit an insurer from refusing to issue a policy or contract of life insurance insuring the life of a person who is or has been a victim of domestic violence if the person who committed the act of domestic violence is the applicant for the insurance or would be the owner of the insurance policy or contract.

(b) Nothing in division (Y)(2) of this section shall be construed to permit an insurer to cancel or refuse to renew any policy or contract of health insurance in violation of the "Health Insurance Portability and Accountability Act of 1996," 110 Stat. 1955, 42 U.S.C.A. 300gg-41(b), as amended, or in a manner that violates or is inconsistent with any provision of the Revised Code that implements the "Health Insurance Portability and Accountability Act of 1996."

(4) An insurer is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of any action taken by the insurer to comply with division (Y) of this section.

(5) As used in division (Y) of this section, "domestic violence" means any of the following acts:

(a) Knowingly causing or attempting to cause physical harm to a family or household member;

(b) Recklessly causing serious physical harm to a family or household member;

(c) Knowingly causing, by threat of force, a family or household member to believe that the person will cause imminent physical harm to the family or household member.

For the purpose of division (Y)(5) of this section, "family or household member" has the same meaning as in section 2919.25 of the Revised Code.

Nothing in division (Y)(5) of this section shall be construed to require, as a condition to the application of division (Y) of this section, that the act described in division (Y)(5) of this section be the basis of a criminal prosecution.

(2) Disclosing a coroner's records by an insurer in violation of section 313.10 of the Revised Code.

With respect to private passenger automobile insurance, no insurer shall charge different premium rates to persons residing within the limits of any municipal corporation based solely on the location of the residence of the insured within those limits.

The enumeration in sections 3901.19 to 3901.26 of the Revised Code of specific unfair or deceptive acts or practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the superintendent of insurance to adopt rules to implement this section, or to take action under other sections of the Revised Code.

This section does not prohibit the sale of shares of any investment company registered under the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-1, as amended, or any policies, annuities, or other contracts described in section 3907.15 of the Revised Code.

As used in this section, "estimate," "statement," "representation," "misrepresentation," "advertisement," or "announcement" includes oral or written occurrences.

Sec. 4705.01. No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. Except as provided in section 4705.09 of the Revised Code or in rules adopted by the supreme court, admission to the bar shall entitle the person to practice before any court or administrative tribunal without further qualification or license.

No sheriff or coroner shall practice as an attorney at law in any court of this state, and no clerk of the supreme court or court of common pleas, or the deputy of either, shall practice in the particular court of which that person is clerk or deputy.

No coroner in a county with a population of one hundred seventy-five thousand one or more who elects not to engage in the private practice of medicine pursuant to section 325.15 of the Revised Code shall practice as an attorney at law during the period in which the coroner may not engage in the private practice of medicine.

No judge of any court of record in this state shall engage in the practice of law during the judge's term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided in section 1901.11 of the Revised Code.

A judge may complete any business undertaken by the judge in the United States district court, the United States circuit court of appeals, or the supreme court of the United States prior to the judge's election as judge.

Sec. 4731.053. (A) As used in this section, "physician" means an individual authorized by this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

(B) The state medical board shall adopt rules that establish standards to be met and procedures to be followed by a physician with respect to the physician's delegation of the performance of a medical task to a person who is not licensed or otherwise specifically authorized by the Revised Code to perform the task. The rules shall be adopted in accordance with Chapter 119. of the Revised Code and shall include a coroner's investigator among the individuals who are competent to recite the facts of a deceased person's medical condition to a physician so that the physician may pronounce the person dead without personally examining the body.

(C) To the extent that delegation applies to the administration of drugs, the rules adopted under this section shall provide for all of the following:

(1) On-site supervision when the delegation occurs in an institution or other facility that is used primarily for the purpose of providing health care, unless the board establishes a specific exception to the on-site supervision requirement with respect to routine administration of a topical drug, such as the use of a medicated shampoo;

(2) Evaluation of whether delegation is appropriate according to the acuity of the patient involved;

(3) Training and competency requirements that must be met by the person administering the drugs;

(4) Other standards and procedures the board considers relevant.

(D) The board shall not adopt rules that do any of the following:

(1) Authorize a physician to transfer the physician's responsibility for supervising a person who is performing a delegated medical task to a health professional other than another physician;

(2) Authorize an individual to whom a medical task is delegated to delegate the performance of that task to another individual;

(3) Except as provided in divisions (D)(4) to (7) of this section, authorize a physician to delegate the administration of anesthesia, controlled substances, drugs administered intravenously, or any other drug or category of drug the board considers to be inappropriate for delegation;

(4) Prevent an individual from engaging in an activity performed for a handicapped child as a service needed to meet the educational needs of the child, as identified in the individualized education program developed for the child under Chapter 3323. of the Revised Code;

(5) Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;

(6) Conflict with any rule adopted pursuant to the Revised Code that is in effect on the effective date of this section April 10, 2001, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;

(7) Prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist;

(8) Authorize a physician assistant, anesthesiologist assistant, or any other professional regulated by the board to delegate tasks pursuant to this section.

SECTION 2. That existing sections 313.05, 313.08, 313.10, 325.17, 3705.16, 3705.29, 3705.99, 3901.21, 4705.01, and 4731.053 of the Revised Code are hereby repealed.

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