

**IN THE SUPREME COURT OF OHIO**

<b>CUYAHOGA COUNTY MEDICAL EXAMINER'S OFFICE,</b>	:	
	:	<b>Case No. 2016-0387</b>
	:	
<b>Appellant,</b>	:	<b>On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District</b>
	:	
<b>vs.</b>	:	
	:	
<b>STATE EX REL. MICHAEL CLAY,</b>	:	<b>Court of Appeals Case No. CA-15-103514</b>
	:	
<b>Appellee.</b>	:	

**BRIEF OF AMICUS CURIAE, OHIO STATE CORONERS ASSOCIATION, IN  
SUPPORT OF APPELLANT, CUYAHOGA COUNTY MEDICAL EXAMINER'S  
OFFICE**

Timothy J. McGinty, Prosecuting Attorney for  
Cuyahoga County, Ohio

Barbara R. Marburger (0019152)  
*(Counsel of Record)*  
Assistant Prosecuting Attorney  
The Justice Center, Courts Tower  
1200 Ontario Street  
Cleveland, OH 44133  
Tel: (216) 443-7838  
Fax: (216) 443-7602  
[bmarburger@prosecutor.cuyahogacounty.us](mailto:bmarburger@prosecutor.cuyahogacounty.us)

*Attorney for Appellant, Cuyahoga County  
Medical Examiner's Office*

C. David Paragas (0043908)  
BARNES & THORNBURG LLP  
41 South High Street, Suite 3300  
Columbus, OH 43215  
Tel: (614) 628-0096  
Fax: (614) 628-1433  
[dparagas@btlaw.com](mailto:dparagas@btlaw.com)

*Counsel for Amicus Curiae, Ohio State  
Coroners Association*

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

*Appellee (pro se)*

**TABLE OF CONTENTS**

STATEMENT OF THE CASE AND FACTS .....1

INTRODUCTION .....1

STATEMENT OF INTEREST OF AMICUS CURIAE, CORONERS ASSOCIATION .....1

LEGAL ARGUMENT .....2

    I.    There Is No Statutory Support Or Rational Basis For Creating Special Access  
          Rights To A Victim’s Coroner’s Record For Inmates Convicted Of Murdering  
          Their Next-Of-Kin. ....3

    II.   The Public Policy Of Protecting A Decedent’s And Surviving Family’s Privacy  
          Supports Requiring An Inmate Convicted Of Murdering His Next-Of-Kin To  
          Seek Judicial Approval To Obtain His Victim’s Coroner’s Record. ....6

    III.  An Inmate Convicted Of Murdering His Next-Of-Kin Should Be Considered To  
          Have Predeceased His Victim And No Longer Have Right Of Access To His  
          Victim’s Coroner’s Record Pursuant To R.C. 2105.19. ....7

    IV.  Public Policy Demands Denying A Convicted Murder Continued Parental Rights  
          To His Victim When Those Rights Would Have Been Terminated Had She  
          Survived His Assault.....8

CONCLUSION .....9

**TABLE OF AUTHORITIES**

**CASES**

*AT&T Communs. of Ohio, Inc. v. Lynch*, 2012-Ohio-1975, 969 N.E.2d 1166.....3

*Holder v. Chester Township*, 11th Dist. No. 2001-G-2461, 2002-Ohio-7168.....5

*National Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004) .....6

*Novak v. Revere Local Sch. Dist.*, 65 Ohio App. 3d 363, 583 N.E.2d 1358 (9th Dist. 1989) .....4

*Ohio v. Bethel*, 10th Dist. No. 07AP-801, 2008-Ohio-2697.....2

*Ohio v. Crane*, 2014-Ohio-3657, 17 N.E.3d 125,.....2

*State v. Bennett*, 4th Dist. No. 05CA2997, 2006-Ohio-2757.....2

*State v. Dowell*, 8th Dist. No. 102408, 2015-Ohio-3237 .....5

*State ex rel. Russell v. Thornton*, 2006-Ohio-5858, 856 N.E.2d 966 .....4

*Winslow-Spacarb, Inc. v. Evatt*, 144 Ohio St. 471, 59 N.E.2d 924 (1945) .....3, 4

## **STATEMENT OF THE CASE AND FACTS**

The Ohio State Coroners Association (“Coroners Association”) adopts the Statement of the Case and Facts which Appellant, Cuyahoga County Medical Examiner’s Office (“Appellant”), submitted in its Merit Brief to this Court.

### **INTRODUCTION**

This case presents a significant policy consideration that would have widespread impact across Ohio: whether an inmate convicted of murdering his next-of-kin retains legal authority to automatically access the entire Coroner’s record of his victim, including portions of the record that are statutorily exempt from public disclosure, when an inmate convicted of murdering a non-family member can access only the public portions of a Coroner’s report after obtaining a Court order allowing him to do so and paying the statutory copying fee.

### **STATEMENT OF INTEREST OF AMICUS CURIAE, CORONERS ASSOCIATION**

The Coroners Association is a professional organization for Ohio’s eighty-eight Coroners and Medical Examiners. The Coroners Association’s mission is to advance administrative, professional, ethical and other matters affecting Coroners, establish a continuing education curriculum, sponsor educational seminars and exchange professional experiences among Coroners, consider and encourage methods of improving and promoting the office of Coroner and further programs that enable the general public and other public officials to better understand and appreciate the vital role Coroners play in today’s society.

One of the most important roles Coroners play is conducting autopsies, which are an investigation into the cause and manner of death. Particularly where an autopsy is performed on a suspected murder victim, the Coroner’s records are essential investigatory tools. “An autopsy is a compelling public necessity if it is needed to protect against an immediate and substantial threat to the public health or to assist law enforcement in conducting a murder investigation.

R.C. 313.131.” *Ohio v. Crane*, 2014-Ohio-3657, 17 N.E.3d 1252, ¶ 47 (internal citation and quotations omitted).

Portions of the Coroner’s record are publicly available, including the cause of death. However, because some portions of the record are so personal, such as photographs and suicide notes, Ohio law recognizes that their release would violate the privacy of the deceased and his or her surviving family members. Such records are statutorily exempted from public disclosure, but are available to a decedent’s next-of-kin.<sup>1</sup> R.C. 313.10(A)(2), -(C)(1). The privacy considerations of a decedent and surviving family are heightened where a victim has been murdered and should be even further heightened where the victim was murdered by his or her own next-of-kin. *See, e.g., State v. Bennett*, 4th Dist. No. 05CA2997, 2006-Ohio-2757, ¶ 45 (recognizing that “autopsy photographs are generally gruesome . . .”).

The Coroners Association has an interest in legal rulings that affect its members and how they comply with their legal obligations to disclose public records while protecting the privacy of records the legislature specifically exempted from disclosure. Because the Coroners Association believes that a convicted, incarcerated murderer of his own next-of-kin should not be granted special rights of access to the Coroner’s record of his victim to an extent or manner different from an inmate convicted of murdering a non-family member or distant relative, the Coroners Association writes in support of Appellant.

## LEGAL ARGUMENT

As Ohio Courts have repeatedly ruled, convicted inmates do not have an absolute right to autopsy records of their victims. *See, e.g., Ohio v. Bethel*, 10th Dist. No. 07AP-801, 2008-Ohio-2697, ¶ 27 (upholding denial of discovery, including of autopsy records, in post-conviction

---

<sup>1</sup> Underscoring the private and sensitive nature of such exempt records, the law allows the Coroner to release such records in only two other circumstances: to a journalist, for inspection only (making copies is expressly prohibited), or to insurers for investigative purposes. R.C. 313.10(D), -(E).

proceeding). The Court of Appeals' opinion, however, creates a special, automatic right of access for an incarcerated, convicted murderer to the Coroner's record of his victim where his victim is his next-of-kin. This is in sharp contrast to an incarcerated, convicted murderer whose victim was a non-family member, who may obtain only public portions of a Coroner's report pursuant to a Court Order and upon payment of the statutory copying fee. R.C. 149.43(B)(8); 313.10(B). Creating a special class of inmates who can access records by virtue of the fact that they murdered an immediate family member is an "absurd" result contrary to the principles of statutory interpretation, equal protection and in violation of the victim's privacy rights and public policy.

**I. There Is No Statutory Support Or Rational Basis For Creating Special Access Rights To A Victim's Coroner's Record For Inmates Convicted Of Murdering Their Next-Of-Kin.**

The Court of Appeals declined to read the statute severely limiting a convicted inmate's access to public records, R.C. 149.43, in harmony with the statute limiting access to private autopsy records to next of kin, R.C. 313.10, on the grounds that the statutes are in different chapters and the convicted murderer is his victim's next-of-kin. Yet what that opinion does is provide inmates convicted of murdering next-of-kin with automatic access to (and access to greater amounts of) records that inmates convicted of murdering non-family members can obtain only by Court order. Creating a special class of convicted murderers is not contemplated by either statute, and the Court of Appeals' opinion should be reversed. "[W]hen interpreting a statute, courts must avoid an illogical or absurd result." *AT&T Communs. of Ohio, Inc. v. Lynch*, 132 Ohio St. 3d 92, 2012-Ohio-1975, 969 N.E.2d 1166, ¶ 18.

Moreover, it is well-settled that "[i]t is always the duty of a court to construe a statute, if possible, in a manner to give it a constitutional operation." *Winslow-Spacarb, Inc. v. Evatt*, 144

Ohio St. 471, 475, 59 N.E.2d 924, 926 (1945). The interpretation adopted by the Court of Appeals puts inmates convicted of murdering next-of-kin in a more favored position than inmates convicted of murdering non-family members. Such a result implicates equal protection. *Id.* at 476 (statute should not be interpreted to treat one group of vendors more favorably than another). Where, as here, a non-suspect class is created, “the statute [must] bear a rational relationship to a legitimate state purpose[.]” *Novak v. Revere Local Sch. Dist.*, 65 Ohio App. 3d 363, 367, 583 N.E.2d 1358, 1361 (9th Dist. 1989). There can be no rational basis for treating convicted, incarcerated murders of next-of-kin more favorably than convicted, incarcerated murderers of non-family members, and the Court of Appeals’ interpretation of the statutes would be unconstitutional.

Fortunately, the statutes can, and should, be interpreted in a manner that does not create an unconstitutional favored class of convicted, incarcerated murderers or an absurd result. R.C. 149.43(B)(8) specifically and drastically limits a convicted inmate’s access to public records concerning criminal investigations. Although these records would generally be available to the public, they are available to convicted inmates only if the “judge who imposed the sentence . . . finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.” R.C. 149.43(B)(8). This Court has held that “[t]he language of the statute is broad and encompassing.” *State ex rel. Russell v. Thornton*, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 14. This Court further has recognized that 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” and the statute “clearly was drafted to restrict the ability of inmates to obtain what would otherwise be easily obtain by noninmates.” *Id.* The preliminary requirement of a court order allowing a convicted inmate to obtain the

records is strictly enforced, and where an inmate has not followed this procedure, “a writ of mandamus cannot be granted because the inmate does not have a clear legal right to have access to the public records.” *Holder v. Chester Twp.*, 11th Dist. No. 2001-G-2461, 2002-Ohio-7168, ¶ 6. The inmate also may not seek these records for a general purpose, but must “identify [a] pending proceeding to which the requested documents would be material.” *State v. Dowell*, 8th Dist. No. 102408, 2015-Ohio-3237, ¶ 7.

The Court of Appeals held that R.C. 149.43 is inapplicable because the convicted inmate was seeking his victim’s entire Coroner’s record as next-of-kin under R.C. 313.10. However, her complete Coroner’s record contains both documents that are public records and documents that are exempt from public disclosure. R.C. 313.10(A)(1). There is no basis to conclude that because some of the records the convicted inmate sought were exempt from public disclosure that he was not required to comply with the procedure imposed on all convicted inmates seeking those records that are public. Allowing an inmate convicted of murdering his own next-of-kin to bypass the requirement to obtain a court order to receive public documents does not comply with the Court’s prior broad interpretation of the policy rationale for that requirement, and the Court of Appeals’ opinion creates an “absurd result” that is entirely avoidable if the Court finds that those requirements apply equally to an inmate seeking the Coroner’s public record of the daughter he was convicted of murdering.

## **II. The Public Policy Of Protecting A Decedent's And Surviving Family's Privacy Supports Requiring An Inmate Convicted Of Murdering His Next-Of-Kin To Seek Judicial Approval To Obtain His Victim's Coroner's Record.**

Public policy supports the same result reached by the logical interpretation of the statutes: requiring a murderer convicted of killing his next-of-kin to seek judicial approval to obtain his victim's Coroner's records, which protects the privacy of his victim and her surviving relatives and prevents any improper use of such sensitive records.

As the United States Supreme Court recognized in construing the Freedom of Information Act to prevent release of private autopsy information, “[f]amily members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 168 (2004).

Conversely, the United States Supreme Court also noted that “[w]e are advised by the Government that child molesters, rapists, murderers, and other violent criminals often make FOIA requests for autopsies, photographs, and records of their deceased victims. Our holding [that such records are protected] ensures that the privacy interests of surviving family members would allow the Government to deny these gruesome requests in appropriate cases.” *Id.* at 170. Troublingly, the Court of Appeals’ opinion ordering the Medical Examiner to provide the inmate with the complete Coroner’s record bypasses any judicial review of the propriety of the inmate obtaining such records and places no restrictions on the inmate’s use of the Coroner’s record of his victim. The inmate could share otherwise non-public autopsy photographs with other inmates or the news media or make other inappropriate use of these sensitive materials, invading the privacy interests of his victim and her surviving family.

Requiring an inmate convicted of murdering his next-of-kin to follow the same process to obtain a Court order to access Coroner's records as inmates convicted of murdering non-family members allows a judge to ensure such release is appropriate, protects the privacy of the victim and her surviving family members and prevents improper use of such records. Judicial review also removes the burden on Coroners to review and determine the validity of a convicted inmate's request while complying with the Coroners' statutory obligations to protect the privacy of records exempt from public disclosure.

**III. An Inmate Convicted Of Murdering His Next-Of-Kin Should Be Considered To Have Predeceased His Victim And No Longer Have Right Of Access To His Victim's Coroner's Record Pursuant To R.C. 2105.19.**

Under Ohio's "slayer" statute, R.C. 2105.19, a convicted murderer is prohibited from benefiting in any way from the death of his victim, and the murderer is considered as having predeceased the victim. That statute should apply here to eliminate the convicted murder's next-of-kin status to his victim and prevent him from benefiting from her death by having special access to her Coroner's record.

The Court of Appeals held that the slayer statute is inapplicable because the convicted defendant was not "seeking any financial gain" in requesting his victim's Coroner's record. Slip Opinion, ¶ 8. However, the language of the statute does not limit itself to prohibiting "financial" gain. Rather, R.C. 2105.19 identifies itself as establishing "[p]ersons prohibited from benefiting by the death of another." It provides that no person convicted of murder "shall *in any way* benefit by the death." R.C. 2105.19(A) (emphasis added). Here, the convicted inmate is seeking access to records due to his "kinship" status to his victim, which clearly would not be automatically available to an inmate who was convicted of murdering a victim other than his next-of-kin. Such special access clearly is a "benefit" and is prohibited by the plain language of

the statute. The convicted inmate should be considered to have predeceased his victim-daughter and thereby be denied the benefit of special access to the Coroner's record of the death he caused.

Moreover, the inmate does receive a financial gain under the Court of Appeals' ruling: unlike an inmate convicted of murdering a non-family member, who is required to pay the statutory copying fee to obtain public portions of the Coroner's record, R.C. 313.10(B), no such fee is applicable when a Coroner's record is disclosed to next-of-kin. Although this financial gain may be slight, the statute does not contain a threshold measure of prohibited "benefit" and should be read to prohibit the convicted inmate from benefiting in any way, form or amount from his murder of his daughter.

**IV. Public Policy Demands Denying A Convicted Murderer Continued Parental Rights To His Victim When Those Rights Would Have Been Terminated Had She Survived His Assault.**

Public policy cannot support allowing a convicted murderer parental rights to his victim-daughter when those rights would have been mandatorily terminated had she survived his assault.

Perversely, the Court of Appeals' ruling that a father convicted of murdering his daughter has a right as a surviving parent to receive her Coroner's record cloaks the father with parental rights that would have been presumptively terminated if his infant daughter had survived his assault. Indeed, here, the father was convicted not only of murder but also felonious assault of the child, and the law provides upon a conviction for felonious assault of a child, the court "*shall* enter a finding that the child . . . should not be placed with [the] parent[.]" thereby terminating parental rights. R.C. 2151.414(E). A "parent and child relationship" is a "legal relationship" defined by Ohio law. R.C. 3111.01. Accordingly, such termination of the parent's rights upon a

conviction for felonious assault would have meant the inmate no longer was the “parent” of the child. And, under R.C. 313.01, the inmate would not have maintained a right to receive the child’s Coroner’s records in the event the child subsequently died. *See* R.C. 313.10(C)(1)(c) (providing “*parents* of the decedent” with the right to obtain the complete Coroner’s record) (emphasis added).

It is unimaginable that as a result of the child dying from her father’s assault, the inmate retains legal status as a “parent” that he would have been stripped of had she lived. Had he assaulted her, the mandatory termination of his parental rights would have denied him next-of-kin access to her complete Coroner’s record in the event she subsequently died from causes unrelated to his assault. It is inconceivable that he conversely would be granted access to the Coroner’s record of a death he caused.

This Court should not allow a convicted murderer access to his victim’s Coroner’s record by virtue of the tragic outcome that his assault resulted in her death, rather than serious bodily harm. To reward a convicted murderer continued parental rights over his victim-daughter that he would have been denied had she lived would not only be an “absurd” result contrary to any reasonable public policy, it would be an unjust one.

### **CONCLUSION**

The result reached by the Court of Appeals creates a special right of access to a victim’s Coroner’s record for convicted inmates who have murdered immediate family members, rather than strangers, acquaintances or even distant family members. This result is contrary to the law and public policy of this State, allows inmates convicted of murdering next-of-kin to bypass judicial review to ensure proper use of such sensitive records and threatens the duties of the

State's Coroners in protecting the privacy of victims and their families. The Coroners Association urges this Court to reverse the decision of the Court of Appeals.

Respectfully Submitted,

*/C. David Paragas*

---

C. David Paragas (0043908)  
BARNES & THORNBURG LLP  
41 South High Street, Suite 3300  
Columbus, OH 43215  
Tel: (614) 628-0096  
Fax: (614) 628-1433  
[dparagas@btlaw.com](mailto:dparagas@btlaw.com)

*Counsel for Amicus Curiae, Ohio State Coroners  
Association*

### **CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing was served via U.S. mail, postage prepaid, this 5th day of July upon the following:

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

Barbara R. Marburger  
Assistant Prosecuting Attorney  
The Justice Center, Courts Tower  
1200 Ontario Street  
Cleveland, OH 44133

*/C. David Paragas*

---

C. David Paragas