

72.031 Prohibited uses of autopsy photographs, other visual images, and video and audio recordings.

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

after a court with jurisdiction as provided in subsection (8)(a) of this section, in a proceeding including parties entitled to notice under subsection (8)(b) of this section, has determined that the autopsy photograph, other visual image in whatever form, video recording, or audio recording is newsworthy or pertains to a matter of public concern or public interest.

- (2) (a) Except as provided in paragraph (b) of this subsection, no medical examiner, coroner, or other public official in lawful possession of an autopsy photograph, other visual image in whatever form, video recording, or audio recording shall knowingly release those materials to any person not specifically authorized in subsection (1) of this section.
- (b) A medical examiner, coroner, or other public official in lawful possession of an autopsy photograph, other visual image in whatever form, video recording, or audio recording may publish such material in a scientific journal or textbook, or use such material for bona fide teaching or training after:
 1. Redacting the decedent's name, address, and Social Security number; and
 2. Obscuring any distinguishing physical features which would allow a viewer to identify the decedent, including but not limited to the decedent's face or any tattoos.
- (3) No autopsy photograph, other visual image in whatever form, video recording, or audio recording supplied by the state medical examiner, coroner, or other public official in lawful possession of those materials pursuant to subsection (1)(b) to (j) of this section shall be used for any purpose not specifically described therein.
- (4) When the purpose for the use of an autopsy photograph, other visual image in whatever form, video recording, or audio recording has been achieved, the material shall be destroyed by the person to whom it was made available under this section.
- (5) When the state medical examiner, coroner, or other public official in lawful possession of an autopsy photograph, other visual image in whatever form, video recording, or audio recording makes the materials available under subsection (1)(f) to (j) of this section:
 1. The name, address, and Social Security number of the decedent shall be redacted; and
 2. Any distinguishing physical features which would allow a viewer to identify the decedent, including but not limited to the decedent's face or any tattoos, shall be obscured.
- (6) Any person seeking any autopsy photograph, other visual image in whatever form, video recording, or audio recording pursuant to this section shall pay any fee allowed under KRS 72.260 for the requested items.
- (7) The provisions of this section shall not be construed to contravene or limit the production of records pursuant to the Rules of Civil Procedure or the Rules of Criminal Procedure.
- (8) (a) The Circuit Court of the county where the decedent resided or, if the decedent was not a resident of the Commonwealth, in which an autopsy photograph,

other visual image in whatever form, video recording, or audio recording is located may, upon a showing of good cause, issue an order authorizing any person to view or copy a photograph, other visual image in whatever form, video recording, or audio recording of an autopsy or to listen to or copy an audio recording of an autopsy, and may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court shall consider whether this disclosure is necessary for the public evaluation of governmental performance, whether the disclosure is the least intrusive means available, and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph, other visual image in whatever form, video recording, or audio recording of an autopsy shall be under the direct supervision of the custodian of the record or of the custodian's designee.

- (b) 1. The spouse or personal representative of the decedent shall be given:
 - a. Reasonable notice of a petition filed with the court to view or copy a photograph, other visual image in whatever form, video recording, or audio recording of an autopsy or a petition to listen to or copy an audio recording;
 - b. A copy of the petition; and
 - c. Reasonable notice of the opportunity to be present and heard at any hearing on the matter.
2. If there is no surviving spouse or personal representative, then the notice shall be given to the deceased's adult children or, if the deceased has no adult children, to the surviving parents of the deceased, and, if there is no individual to represent the estate of the decedent, then the court shall proceed to schedule a hearing without giving such notice.

Effective: June 29, 2017

History: Created 2017 Ky. Acts ch. 78, sec. 1, effective June 29, 2017.

Legislative Research Commission Note (6/29/2017). 2017 Ky. Acts ch. 78, sec. 4, states, "This Act [which creates this statute and KRS 72.032 and 72.992(4)] is not meant to alter or change in any way the current law in the Commonwealth relating to the availability of autopsy records that are not otherwise specifically provided for in this Act.