



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Am. H.B. 471
127th General Assembly
(As Passed by the House)

Reps. Setzer, Gibbs, Combs, Bacon, Domenick, Dyer, Evans, Flowers, Grady, Hughes, Letson, Schneider

BILL SUMMARY

- Specifies that certain records of a decedent relating to the criminal investigation of the decedent's death are not public records, but provides that the records so excluded are part of the "full and complete records of the coroner" that must be provided upon request to specified next of kin or insurers.
- Authorizes the coroner to hire local law enforcement officers as investigators, to use money in the coroner's laboratory fund for administration of the laboratory, and to dispose of dangerous drugs found at the scene of an investigation the coroner conducts, if the dangerous drugs are no longer needed for investigative or scientific purposes.

CONTENT AND OPERATION

Certain coroner's records not public records

Current law generally states that the records of the coroner made personally by the coroner or by anyone acting under the coroner's direction or supervision are public records. Certain of the coroner's records, however, are not public records. (R.C. 313.10(A)(1) and (2); see **COMMENT 1**.) The bill provides that, in addition to the records that currently are excluded as public records, the following coroner's records are not public records: (1) the records of a deceased individual that are "confidential law enforcement investigatory records" as currently defined in the Public Records Law (see **COMMENT 2**) and (2) laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16 (see **COMMENT 3**) (R.C. 313.10(A)(2)(e) and (f)).

The bill also specifies that the coroner of the county where the death was pronounced is responsible for the release of all public records relating to that death and makes conforming changes to various provisions of current law (R.C. 313.10(A)(1), (A)(2), (B), (C)(1), (D), and (E)(1)).

Provision of "full and complete records of the coroner" to next of kin or insurer

Provision to next of kin

Current law requires the coroner to provide a copy of the "full and complete records of the coroner" (see "**Definition of "full and complete records of the coroner"**," below) 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 provision as the next of kin of a decedent: (1) the surviving spouse of the decedent, (2) 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 18 years of age, with each child over 18 years of age having an independent right to make a request pursuant to this division, (3) if there is no surviving spouse or child over 18 years of age, or if the surviving spouse and all children over 18 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, or (4) if there is no surviving spouse, child over 18 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.

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 the provision described in the preceding paragraph, or if all next of kin of the decedent have died without having made a request pursuant to that provision, the coroner must 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. (R.C. 313.10(C).)

Provision to insurer

Current law also provides that an insurer may submit to the coroner a written request to obtain a copy of the "full and complete records of the coroner" (see "**Definition of "full and complete records of the coroner"**," below) with respect to a deceased person. The request must 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. If an insurer submits such a written request to the coroner to obtain a copy of records, the coroner must grant the request. 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: (1) 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, (2) 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, or (3) 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.

Prior to the delivery of records that are the subject of a request made pursuant to this provision, the coroner may require the insurer who submitted the request for the records to pay a record retrieval and copying fee at the rate of 25¢ per page or a minimum fee of \$1. Any records produced by the coroner in response to a written request under this provision must 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: (1) the release of the records is reasonably necessary to further a purpose described in the preceding paragraph, (2) a court of competent jurisdiction orders the insurer to produce the records, (3) the insurer is required to produce the records in response to a civil or criminal subpoena, or (4) 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.

The coroner may contact the decedent's next of kin to inform the next of kin that an insurer has submitted a written request pursuant to this provision and whether the coroner has granted the journalist's or the insurer's request. (R.C. 313.10(E) and (F).)

Definition of "full and complete records of the coroner"

Current law. Under current law, as used in the next of kin and insurer provisions described above, "full and complete records of the coroner" includes, but is not limited to, the following (R.C. 313.10(G)(1)): (1) 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 R.C. 313.13(A), (2) preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision, (3) photographs of a decedent made by the coroner or by anyone acting under the coroner's direction or supervision, (4) suicide notes, and (5) medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under R.C. 313.091.

Operation of the bill. The bill expands the definition of "full and complete records of the coroner" so that, in addition to the records included in the definition under current law, it also includes, but is not limited to (R.C. 313.10(G)(1)(f) and (g)): (1) records of a deceased individual that are confidential law enforcement investigatory records as defined in R.C. 149.43 (see **COMMENT 2**), and (2) laboratory reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16 (see **COMMENT 3**).

Coroner's appointments

Current law authorizes the coroner to appoint deputy coroners, pathologists serving as deputy coroners, technicians, stenographers, secretaries, clerks, custodians, or investigators. A coroner may appoint as a person in any of those positions or as any 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. The bill also allows the coroner to appoint, as an investigator, a deputy sheriff within the county or a law enforcement officer of a political subdivision located within the county. (R.C. 313.05(B).)

Use of money in the coroner's laboratory fund

Existing law requires that money derived from fees paid for examinations conducted by a coroner's laboratory be kept in a special fund, for the use of the coroner's laboratory. These funds must be used to purchase necessary supplies and equipment for the laboratory. The bill further allows these funds to be used to pay associated costs incurred in the administration of the laboratory at the coroner's discretion. (R.C. 313.16.)

Disposition of controlled substances

The bill authorizes the coroner to secure, catalog, record, and, with the approval of the prosecuting attorney, destroy any dangerous drugs found at the scene of an investigation the coroner conducts, if the dangerous drugs are no longer needed for investigative or scientific purposes (R.C. 313.211).

COMMENT

1. The records of a coroner that, subject to specified exceptions for journalists and insurers, currently are not public records are (R.C. 313.10(A)(2)): (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, and (d) medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or a deputy coroner under R.C. 313.091.

2. As currently defined in the Public Records Law, "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 (existing R.C. 149.43, not in the bill): (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, or (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. Criminal Rule 16, not in the bill, provides rules for discovery in criminal actions and proceedings. In relevant part, it provides as follows:

(A) **Demand for discovery.** Upon written request each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that demand for discovery has been made and the discovery has not been provided.

(B) **Disclosure of evidence by the prosecuting attorney.**

(1) **Information subject to disclosure.**

...

(c) **Documents and tangible objects.** Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, available to or within the possession, custody or control of the state, and which are material to the preparation of his defense, or are intended for

use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant.

(d) **Reports of examination and tests.** Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, available to or within the possession, custody or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney.

...

(f) **Disclosure of evidence favorable to defendant.** Upon motion of the defendant before trial the court shall order the prosecuting attorney to disclose to counsel for the defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment. The certification and the perpetuation provisions of subsection (B)(1)(e) apply to this subsection.

...

(C) **Disclosure of evidence by the defendant.**

(1) **Information subject to disclosure.**

(a) **Documents and tangible objects.** If on request or motion the defendant obtains discovery under subsection (B)(1)(c), the court shall, upon motion of the prosecuting attorney order the defendant to permit the prosecuting attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, available to or within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) **Reports of examinations and tests.** If on request or motion the defendant obtains discovery under subsection (B)(1)(d), the court shall, upon motion of the prosecuting attorney, order the defendant to permit the prosecuting attorney to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, available to or within the possession or control of the defendant, and which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial, when such results or reports relate to his testimony.

HISTORY

ACTION	DATE
Introduced	02-06-08
Reported, H. State Government & Elections	12-10-08
Passed House (95-0)	12-10-08

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