

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1068

Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

1A BILL for an Act to amend and reenact sections 23-01-05.5, 43-10-10.1, and 44-04-18.18 of
2the North Dakota Century Code, relating to autopsy reports, working papers, funeral practices,
3 and photographs.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 23-01-05.5 of the North Dakota Century Code is 6
amended and reenacted as follows:

7 **23-01-05.5. Autopsy reports, working papers, and images - Confidential -**
Exceptions.

8 1. As used in this section:

9 a. "Autopsy report" means the report of the forensic examiner or the
examiner's

10 designee on the post-mortem examination of a deceased individual to
determine

11 the cause and manner of death, including any written analysis, diagram, 12
photograph, or toxicological test results.

13 b. "Notes" means the notes or dictations taken or created by the state forensic 14
examiner or the examiner's designee during the course of an investigation into 15 the cause
and manner of death of a decedent.

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16 c. "Report of death" means the official findings on the cause of death and manner
of

17 death issued by the state forensic examiner, the examiner's designee, county
18 coroner, or pathologist performing an autopsy ordered by a county coroner or by
19 the state forensic examiner and which is the face page of the autopsy report
20 identifying the decedent and stating the cause of death and manner of death.

d. "Working papers" means the medical records, investigatory records, law
enforcement records, and other records or materials collected or compiled by the
state forensic examiner or the examiner's designee and the notes or dictations
created by the state forensic examiner or the examiner's designee during the

5 course of an investigation into the cause and manner of death of a decedent. The

6 term does not include autopsy photographs or other visual images or video or

7 audio recordings of an autopsy taken by the state forensic examiner, the

8 examiner's designee, prosecutor, criminal justice agency, any employee or agent

9 of a criminal justice agency, or any other individual, or other photographs or 10 visual

images of the decedent which may have been taken by law enforcement or

11 other individuals.

12 2. ~~An autopsy report and any working papers and notes relating to an autopsy report are~~
13 ~~confidential and may be disclosed only as permitted by this section.~~ The report of 14 death
is subject to disclosure as follows:

15 a. Thelf requested before the report of death becomes a public record, the
next of

16 kin or authorized representative requesting the report of death is responsible for

17 providing to the state forensic examiner or the examiner's designee satisfactory

18 proof of relationship to the deceased and contact information for notification of

19 the report of death.

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20 b. When in receipt of the information in subdivision a, the state forensic
 examiner,
21 examiner's designee, county coroner, or pathologist who performed the autopsy
22 shall make a good faith effort to immediately notify the decedent's next of kin or
23 authorized representative of the availability of the report of death. The notification
24 or attempts to notify the next of kin or authorized representative must be 25
 recorded and must precede any public disclosure of the report of death. 26
 c. The report of death becomes a public record eight days after the report
 of death

27 is finalized.

28 3. ~~Subject to the limitations on the disclosure of an autopsy photograph or other visual~~
29 ~~image or video or audio recording of an autopsy required under section 44-04-18.18,~~
30 ~~any working~~Working papers and notes relating to a final autopsy report may be disclosed
pursuant to a court order in accordance with section 44 - 04- 18.11 and as otherwise expressly
provided by law subsection 5.

4. An autopsy report is confidential and may be disclosed in accordance with section
44- 04- 18.11 and subsections 5 and 6.

5 5. The state forensic examiner or the examiner's designee shall disclose a copy of the 6
autopsy report and working papers to:

7 a. ~~To any~~A county coroner, including a coroner in any state or Canadian
 province,

8 with jurisdiction over the death, and the coroner may use or disclose these 9
 records for purposes of an investigation, inquest, or prosecution.

10 b. ~~To any state's attorney~~A prosecutor or criminal justice agency, as defined by 11
section 44 - 04- 18.7, including a prosecutor or criminal justice agency of the

12 United States, any state, or any Canadian province, with jurisdiction over an

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investigation of the death and the ~~state's attorney~~prosecutor or criminal justice 14
agency may use or disclose these records for the purposes of an investigation
or

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prosecution.

c. ~~To workforce~~Workforce safety and insurance if the death is related to the
decedent's work, and to any other workers' compensation or other similar 18
program, established by law, that provides benefits for work-related injuries or
19 illness without regard to fault if there is no criminal investigation.

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d. ~~To the~~The child fatality review panel if there is no active criminal investigation.
e. The suicide fatality review commission if there is no active criminal
investigation.

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f. In accordance with a court order.

~~5-6. The~~If there is no active criminal investigation, the state forensic examiner or the
24 examiner's designee upon request shall disclose a copy of the autopsy report
to:

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a. The decedent's personal representative ~~and to the~~.

b. The decedent's spouse, child eighteen years of age or older, or parent, upon
27 proof of the relationship, ~~if there is no active criminal investigation.~~

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~~b. c. A~~ physician or hospital who that treated the ~~deceased decedent~~ immediately prior 29
~~to before~~ death if there is no active criminal investigation.

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~~e. d. An~~ insurance company upon proof that the decedent's life was covered by a 31
policy issued by the company ~~if there is no active criminal investigation.~~

~~d. e. The~~ food and drug administration, the national transportation safety board, the
occupational health and safety administration, and any other federal or state
agency with authority to obtain an autopsy report to investigate a death resulting
from the decedent's type of injury or illness.

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e.f. _____ A professional or research organization collecting data to initiate or advance death investigation standards, after the identifiers necessary to create a limited data set under title 45, Code of Federal Regulations, part 164, section 514, 8 subsection e have been removed from the report.

g. _____ The maternal mortality review committee.

6.7. An autopsy photograph or other visual image or a video or audio recording of an autopsy taken by the state forensic examiner, the examiner's designee, prosecutor, criminal justice agency, any employee or agent of a criminal justice agency, or any other individual is confidential and may be disclosed in accordance with section 14 44- 04- 18.11 and as provided in this subsection :

a. _____ The state forensic examiner or the examiner's designee shall, upon request, disclose a copy of autopsy photographs or other visual images or video or audio recordings of an autopsy to any prosecutor or criminal justice agency as defined by section 44 - 04- 18.7, including a prosecutor or criminal justice agency of the United States, any state, or any Canadian province, with jurisdiction over an investigation of the death and the prosecutor or criminal justice agency may use or disclose these records for the purposes of an investigation or prosecution.

b. _____ After redacting all information identifying the decedent, including name, address, and social security number, and anonymizing facial recognition, a medical examiner, coroner, or physician may use an autopsy photograph, image, or video or audio recording for:

(1) Medical or scientific teaching or training purposes;

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- (2) Teaching or training of law enforcement personnel;
- (3) Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;
- (4) Conferring with medical or scientific experts;
- (5) Publication in a scientific or medical journal or textbook; or
- (6) Teaching or training of coroner personnel or other licensed or certified medical professionals.

c. The decedent's spouse, child eighteen years of age or older, or parent, upon proof of the relationship, may view an autopsy photograph, image, or recording in

the business office of a medical examiner, coroner, or physician who has possession of the materials, if there is not an active criminal investigation or prosecution.

d. Upon receipt by the requestor of a court order requiring disclosure and a court- issued protective order in accordance with section 44 - 04- 18.11, the state forensic

examiner or the examiner's designee shall disclose a copy of autopsy photographs or other visual images or video or audio recordings of an autopsy to the decedent's spouse, child eighteen years of age or older, or parent, upon proof of the relationship.

8. Other photographs or visual images of the decedent which may have been taken by law enforcement or other persons are confidential.

9. Notes are confidential records.

10. The forensic examiner, the examiner's designee, any county coroner or county medical coroner, and any public employee who, in good faith, discloses autopsy findings, an autopsy report, working papers, autopsy photograph, notes, other photographs or visual images of a decedent, or a video or audio recording of an

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autopsy, or other information relating to an autopsy report or cause of death to a

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person who the public official or employee reasonably believes is entitled to that

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information under this section is immune from any liability, civil or criminal, for making

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that disclosure. For the purposes of any proceeding, the good faith of any public 25

employee who makes a disclosure under this section is presumed.

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SECTION 2. AMENDMENT. Section 43-10-10.1 of the North Dakota Century Code is

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amended and reenacted as follows:

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43-10-10.1. Funeral practice - Exceptions.

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1. Nothing in this chapter may be construed to prevent a person from doing work within the standards and ethics of that person's profession and calling, provided that the

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person does not represent to the public that the person is engaging in the practice of funeral service.

2. Nothing in this chapter may be construed to prevent embalming by commissioned medical officers in the armed forces of the United States or under the United States public health service while on active duty in a respective service.
3. This chapter does not prevent the transportation of a dead human body in accordance with other applicable state and federal laws.
4. This chapter does not prohibit ambulance or other emergency transportation of a dead human body.
5. This chapter does not prohibit members of the clergy from performing funeral and gravesite or memorial services.
6. This chapter does not prohibit unlicensed individuals, employed by a funeral establishment, from performing gravesite or memorial services for cremated remains.
7. This chapter does not prohibit individuals licensed in other states, as embalmers or funeral directors, from assisting funeral practitioners.
- ~~7.8.~~ This chapter does not prohibit individuals employed by a funeral establishment from performing nonprofessional tasks or activities that do not require independent, professional judgment under the supervision of an individual licensed to practice funeral service.

0 **SECTION 3. AMENDMENT.** Section 44-04-18.18 of the North Dakota Century Code is
1 amended and reenacted as follows:

2 **44-04-18.18. Autopsy images - Confidential - Exceptions.**

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- 3 1. ~~An autopsy photograph or other visual image or a video or audio recording of an~~
4 autopsy is confidential. However, a criminal justice agency may use or disclose these
5 materials for purposes of an investigation or prosecution.
- 6 2. ~~a. — After redacting all information identifying the decedent, including name, address,~~
7 and social security number, and anonymizing facial recognition, a medical
8 examiner, coroner, or physician may use an autopsy photograph, image, or
9 recording for:
- 10 (1) ~~Medical or scientific teaching or training purposes;~~
- 11 (2) ~~Teaching or training of law enforcement personnel;~~

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- 1 ~~(3) — Teaching or training of attorneys or others with a bona fide professional~~
2 ~~need to use or understand forensic science;~~
3 ~~(4) — Conferring with medical or scientific experts;~~
4 ~~(5) — Publication in a scientific or medical journal or textbook; or~~
5 ~~(6) — Teaching or training of coroner personnel or other licensed or certified~~
6 ~~medical professionals.~~
7 ~~b. — A medical examiner, coroner, or physician who has in good faith complied with~~
8 ~~this subsection is not subject to any penalty or liability for using an autopsy~~
9 ~~photograph, image, or recording.~~
10 ~~3. — The decedent's spouse, child, parent, or sibling, upon proof of the relationship, may~~
11 ~~view an autopsy photograph, image, or recording in the business office of a medical~~
12 ~~examiner, coroner, or physician who has possession of the materials, if there is not an~~
13 ~~active criminal investigation or prosecution.~~
14 4. — Disclosure of an autopsy photograph, image, or recording may be obtained
15 under
16 section 44-04-18.11 An autopsy photograph or other visual image or a video or audio
17 recording of an autopsy taken by the state forensic examiner, the examiner's
18 designee, prosecutor, criminal justice agency, any employee or agent of the criminal
19 justice agency, or any other individual is confidential and may be disclosed in
 accordance with section 23 - 01- 05.5 .