

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1320

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Dennis Halliwell  
Operator's Signature

10/3/03  
Date

2003 HOUSE JUDICIARY

HB 1320

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Deanna Halliwell  
Operator's Signature

10/3/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1320

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-20-03

Tape Number	Side A	Side B	Meter #
1	xx		0-16
Committee Clerk Signature <i>[Signature]</i>			

**Minutes:** 13 members present.

**Chairman DeKrey:** I don't see the prime sponsor here, so we will hear opposition now.

**Jack McDonald, ND Newspaper Association & ND Broadcasters Association:** Opposed (see attached testimony).

**Rep. Koppelman:** I am the sponsor of HB 1320, (see attached testimony). I have drafted an amendment to my bill, and urge the committee to adopt that amendment. The bill does allow access to autopsy photos, what the amendment would do is delete the areas of the bill that deal with both inquests and records. Immediate family can still have access to autopsy photos and by law enforcement or a court order. I request that the amendment to HB 1320 and a Do Pass recommendation on the bill when amended.

**Rep. Delmore:** So Rep. Koppelman, you would be amenable to what Mr. McDonald has suggested?

**Rep. Koppelman:** I would and I believe the amendment does accomplish that.

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10/3/03  
Date

Page 2  
House Judiciary Committee  
Bill/Resolution Number HB 1320  
Hearing Date 1-20-03

**Rep. Delmore:** That would mean that the media would have no access to even see the photos themselves.

**Rep. Koppelman:** That would be correct. They would not be available for publication, and I would think that if by court order or if family request, the photos wouldn't be prohibited if a family wanted them.

**Rep. Klemin:** The term immediate family, what is the definition? What constitutes immediate family.

**Rep. Koppelman:** We did discuss that, the term immediate family is well-defined and well established in state law.

**Rep. Klemin:** The second question has to do with medical education and training of persons who do this kind of work. Would this preclude those persons in medical education or training programs from seeing autopsy photos.

**Rep. Koppelman:** I don't really know the answer to that. I suppose if they are not public record, they would have to get the permission of the family or a court or law enforcement to do that.

**Rep. Klemin:** Use of the word confidential. As I understand it, there is a distinction between confidential and exemption in open records. You are saying, that even though these would "confidential" records which means they can't be disclosed, that nevertheless the family could disclose them.

**Rep. Koppelman:** I am not sure that I know the answer to that. My intention is simply to keep them from being released for public consumption and used in an irresponsible manner, and whether that term should be confidential or exempt, I am not sure of the distinction.

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Date

Page 3  
House Judiciary Committee  
Bill/Resolution Number HB 1320  
Hearing Date 1-20-03

**Chairman DeKrey:** Thank you for appearing. Anyone else wishing to testify in support of HB 1320.

**Chairman DeKrey:** Have you seen the amendment, Mr. McDonald. Does it fix what you want or still have problems with it.

**Jack McDonald:** We support the amendment. I think we need to massage the amendment a little bit, I'm not sure if it is doing exactly what Rep. Koppelman wants. I think we can work through it.

**Rep. Klemin:** This section that you've got attached to your testimony, that says records of the coroner are public records in counties over 8,000 people. There is no similar provision for counties under 8,000 now?

**Mr. McDonald:** Not really. That specific provision is in 11-19.1 which actually is the older law. 11-19 is the new law.

**Rep. Klemin:** So if it's over 8,000, they are public records and if under 8,000 they are not.

**Mr. McDonald:** No not really because there is no provision in 11-19 that makes it confidential or exempt, so therefore they are open to public records. That's the reason they didn't put that in, they are open records unless there's something that makes them closed. There is a definition of "immediate family" in the law, relating to notification of next-of-kin in the law enforcement section; husband, spouse and children. If records are confidential, they are closed and forbidden by law to be released to anyone, including someone with medical training, etc. Exempt means that they can be released at the discretion of the coroner, or for medical training.

**Edward Erickson, AG Office:** I was not hear to provide testimony but just to observe; but the section that Jack had mentioned talking about the medical records being public documents, was

Page 4  
House Judiciary Committee  
Bill/Resolution Number HB 1320  
Hearing Date 1-20-03

put in not to address whether the records are open or closed but to address the fact that these documents are the property of the government; there was an issue where some medical coroners are just local doctors and there was concern that they might regard these documents as theirs, as a doctor and not the government's property, as far as the autopsy. That is all that section addresses under general open records law.

**Rep. Kingsbury:** Can the cause of death be kept off the death certificate by family request. Is that legal.

**Chairman DeKrey:** Yes. Anyone else wishing to testify on HB 1320. We will close the hearing on HB 1320.

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Deanna Hallworth  
Operator's Signature

10/3/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1320

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-27-03

Tape Number	Side A	Side B	Meter #
1		xx	27-29
Committee Clerk Signature <i>Al Penix</i>			

**Minutes:** Committee work was held on HB 1320. Two sets of amendments were offered, one from Rep. Koppelman and one from Rep. DeKrey. (see attached amendments)

**Rep. Delmore:** Moved do pass on both sets of amendments: .0101 and .0102.

**Rep. Maragos:** Seconded.

**Chairman DeKrey:** Any discussion?

**Rep. Klemin:** I think the term "immediate family" is too vague. Shouldn't include someone staying in the home to be immediate family.

**Rep. Delmore:** Withdraw the motion for the 2 sets of amendments.

**Rep. Maragos:** Withdraw second.

**Chairman DeKrey:** Rep. Klemin will put together the amendments into one total amendment.

Meeting closed.

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*Deanna Hall*  
Operator's Signature

10/3/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1320

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-28-03

Tape Number	Side A	Side B	Meter #
2	xx		17.2-20
Committee Clerk Signature <i>[Signature]</i>			

**Minutes:** Committee work was held. Rep. Klemin brought the new amendment that would cover amendments of 1-27-03, plus add the definition of "immediate family".

**Chairman DeKrey:** What are the committee's wishes.

**Rep. Klemin:** I move a do pass on the amendments.

**Rep. Grande:** Seconded.

**Voice vote:** All aye.

**Rep. Klemin:** Move a Do Pass as amended.

**Rep. Grande:** Seconded.

12 YES 0 NO 1 ABSENT DO PASS W/AMENDMENTS CARRIER: Rep. Grande

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*[Signature]*  
Operator's Signature

10/3/03  
Date



38279.0101  
Title.

Prepared by the Legislative Council staff for  
Representative Koppelman  
January 17, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

Page 1, line 1, replace "sections 11-19-02, 11-19-03," with "section" and remove ", and"

Page 1, line 2, remove "23-01-05.4" and remove "Inquest and"

Page 1, line 3, replace "information" with "photographs and video recordings"

Page 1, remove lines 5 through 23

Page 2, line 3, after "results" insert "- Confidentiality"

Page 2, line 13, replace "The" with "Photographs or video recordings of an" and remove "report and any related materials"

Page 2, line 15, remove "The coroner may provide the cause of death for the"

Page 2, remove lines 16 through 31

Page 3, remove lines 1 through 4

Renumber accordingly

38279.0102  
Title.

Prepared by the Legislative Council staff for  
Representative DeKrey  
January 20, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

Page 1, line 11, after the first underscored comma insert "a medical school for use for educational purposes."

Page 1, line 21, after the first underscored comma insert "a medical school for use for educational purposes."

Page 2, line 14, after the underscored comma insert "a medical school for use for educational purposes."

Page 3, line 2, after "requiring" insert "or authorizing"

Renumber accordingly

Page No. 1

38279.0102

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Deanna Halliwell  
Operator's Signature

10/3/03  
Date

38279.0103  
Title.0200

Prepared by the Legislative Council staff for  
Representative Klemin  
January 27, 2003

VR  
1/28/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1320 JUD 1-29-03

Page 1, line 1, replace "sections 11-19-02, 11-19-03," with "section" and remove ", and"

Page 1, line 2, remove "23-01-05.4" and remove "Inquest and"

Page 1, line 3, replace "Information" with "photographs and video recordings"

Page 1, remove lines 5 through 23

HOUSE AMENDMENTS TO HB 1320 JUD 1-29-03

Page 2, line 3, after "results" insert "- Confidentiality"

Page 2, line 13, replace "The" with "Photographs or video recordings of an" and remove "report and any related materials"

Page 2, line 14, after the underscored comma insert "a medical school for use for educational purposes."

Page 2, line 15, replace "The coroner may provide the cause of death for the" with "For purposes of this section, 'Immediate family' means the decedent's spouse, parent, child, or sibling."

Page 2, remove lines 16 through 31

HOUSE AMENDMENTS TO HC 1320 JUD 1-29-03

Page 3, remove lines 1 through 4

Renumber accordingly

Page No. 1

38279.0103

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Donna Halliwell  
Operator's Signature

10/3/03  
Date

Date: 1/28/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1320

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38279.0103 .0200

Action Taken To Pass as Amended

Motion Made By Rep. Kretschmar Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	<u>✓</u>		Rep. Delmore	<u>✓</u>	
Vice Chairman Maragos	<u>AB</u>		Rep. Eckre	<u>✓</u>	
Rep. Bernstein	<u>✓</u>		Rep. Onstad	<u>✓</u>	
Rep. Boehning	<u>✓</u>				
Rep. Galvin	<u>✓</u>				
Rep. Grande	<u>✓</u>				
Rep. Kingsbury	<u>✓</u>				
Rep. Klemin	<u>✓</u>				
Rep. Kretschmar	<u>✓</u>				
Rep. Wrangham	<u>✓</u>				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Grande

If the vote is on an amendment, briefly indicate intent:

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Diana Hallmark  
Operator's Signature

10/3/03  
Date

REPORT OF STANDING COMMITTEE (410)  
January 29, 2003 11:30 a.m.

Module No: HR-17-1241  
Carrier: Grand  
Insert LC: 38279.0103 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HB 1320: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1320 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections 11-19-02, 11-19-03," with "section" and remove ", and"

Page 1, line 2, remove "23-01-05.4" and remove "Inquest and"

Page 1, line 3, replace "information" with "photographs and video recordings"

Page 1, remove lines 5 through 23

Page 2, line 3, after "results" insert "- Confidentiality"

Page 2, line 13, replace "The" with "Photographs or video recordings of an" and remove "report and any related materials"

Page 2, line 14, after the underscored comma insert "a medical school for use for educational purposes."

Page 2, line 15, replace "The coroner may provide the cause of death for the" with "For purposes of this section, "immediate family" means the decedent's spouse, parent, child, or sibling."

Page 2, remove lines 16 through 31

Page 3, remove lines 1 through 4

Renumber accordingly

2003 SENATE JUDICIARY

HB 1320

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Deanna Halliwell  
Operator's Signature

10/3/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1320

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/19/03

Tape Number	Side A	Side B	Meter #
1	X		22.0 - 30
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

**Testimony in Support of HB 1320**

Rep Kim Koppelman - Dist # 13 (meter 22) Read Testimony - Attachment #1

Sen. Lyson questioned if photos could be used in criminal prosecutions still as part of an investigation-discussion. Has this been a wide spread problem in the county coroners office, not really they do not release photos, but they do not have a law to protect them from this.

Discussion of releasing photo's to a physician-by the request of the family.

Jack McDonald- ND Newspaper & Broadcasters Assoc. (meter 29) Read Testimony - Att #2.

**Testimony in Opposition of HB 1320**

None

**Senator John T. Traynor, Chairman closed the hearing**

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*Deanna Hall Smith*  
Operator's Signature

*10/3/03*  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1320

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/24/03

Tape Number	Side A	Side B	Meter #
1	X		18.9 - 24.9
Committee Clerk Signature <i>Maria L. Solberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

Discussion of Amendments (meter 20) Wish to adopt only first amend.

Motion Made to DO PASS Amend #1 by Jack McDonald Sen. Nelson and seconded by Senator Thomas L. Trenbeath

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Motion Made to DO PASS HB 1320 as amend by Sen. Dever and seconded by Thomas L. Trenbeath

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Senator John T. Traynor, Chairman closed the hearing

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Operator's Signature

10/3/03  
Date



2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1320

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/26/03

Tape Number	Side A	Side B	Meter #
1	X		7.5 - 26.8
Committee Clerk Signature <i>Mona L Solberg</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

Motion made to reconsider HB 1320 by Senator Carolyn Nelson and seconded by Sen. Trenbeath. All in favor.

Rep. Kim Koppelman - Dist #13, Proposed a new amendment as a result of a meeting with State Medical Examiner, Attorney General's Office, and Department of Health. Discussion of the use of the word Confidential-with its exemptions.

There are two types of autopsy's done:

1. Hospital Autopsy - Medical Records; this bill does not pertain to these. These are protected under the "Medical Records" laws.
2. Medical Examiners Autopsy or Coroner's Office - Usually involves a law suit. This is what this bill pertains to

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*10/3/03*  
Date

Page 2  
Senate Judiciary Committee  
Bill/Resolution Number HB 1320  
Hearing Date 03/26/03

Discussion of cases that are used in publications-removed identity, family viewing of, or other medical examiners and a court order for viewing- ND State Medical Examiner.

Sen. Nelson discusses the word "recording" was not followed through in the second section.

Mr. Erickson - Attorney Generals office fixed this error.

Defense Council - would be allowed to view these under "evidence". Once the case is closed it becomes a different case. Discussion of HIPA's ruling and the word "redact".

**Motion Made to DO PASS Amendment on HB 1320 by Sen. Nelson and seconded by Sen.**

**Trenbeath**

**Roll Call Vote: 5 Yes. 0 No. 1 Absent**

**Motion Passed**

**Motion Made to adopt amendment to change "photo" to these materials on HB 1320 by**

**Sen. Nelson and seconded by Sen. Trenbeath**

**Roll Call Vote: 5 Yes. 0 No. 1 Absent**

**Motion Passed**

**Motion Made to DO PASS HB 1320 as twice amended by Sen. Nelson and seconded by Sen.**

**Trenbeath**

**Roll Call Vote: 5 Yes. 0 No. 1 Absent**

**Motion Passed**

**Floor Assignment: Sen. Nelson**

**Senator John T. Traynor, Chairman closed the hearing.**

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Donna M. Hall  
Operator's Signature

10/3/03  
Date

38279.0201  
Title.0300

Adopted by the Judiciary Committee  
March 25, 2003

*JB*  
3-24-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1320

Page 1, line 6, after "Confidentiality" insert "of photographs and video recordings"

Renumber accordingly

Page No. 1

38279.0201

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*Deanna Hall*  
Operator's Signature

10/3/03  
Date

Date: March 25, 2003  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1320

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38279.0201

Action Taken DO PASS Amend #2 submitted by Jack McDonald

Motion Made By Sen. Nelson Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Donna Hall  
Operator's Signature

10/3/03  
Date

Date: March 25, 2003

Roll Call Vote #: 2

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1320**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38279.0201

Action Taken DO PASS as AMENDED

Motion Made By Sen. Dever Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Dever

If the vote is on an amendment, briefly indicate intent:

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Deanna Hall  
Operator's Signature

10/3/03  
Date

REPORT OF STANDING COMMITTEE (410)  
March 24, 2003 4:03 p.m.

Module No: SR-52-5602  
Carrier: Dever  
Insert LC: 38279.0201 Title: .0300

REPORT OF STANDING COMMITTEE  
HB 1320, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends  
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**  
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1320 was placed  
on the Sixth order on the calendar.

Page 1, line 6, after "Confidentiality" Insert "of photographs and video recordings"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

SR-52-5602

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Deanna Halliwell  
Operator's Signature

10/3/03  
Date

Date: March 26, 2003  
Roll Call Vote #: 1

2003 SFNATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1320

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken MOTION TO RECONSIDER

Motion Made By Sen. Nelson Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Dennis Hall  
Operator's Signature

10/3/03  
Date

38279.0202  
Title.

Prepared by the Legislative Council staff for  
Representative Koppelman  
March 26, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1320

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to the privacy of autopsy photographs, images, and recordings.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Autopsy Images - Confidential - Exceptions.**

- The se materials*
1. An autopsy photograph or other visual image or a video or audio recording of an autopsy is confidential. However, a criminal justice agency may use ~~or disclose the photograph or image~~ for purposes of an investigation or prosecution.
  2. a. 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 recording, for:
    - (1) Medical or scientific teaching or training purposes;
    - (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; or
    - (5) Publication in a scientific or medical journal or textbook.
  - b. A medical examiner, coroner, or physician who has in good faith complied with this subsection is not subject to any penalty or liability for using an autopsy photograph, image, or recording.
  3. The decedent's spouse, child, parent, or sibling, 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.
  4. Disclosure of an autopsy photograph, image, or recording may be obtained under section 44-04-18.11.

Renumber accordingly

*for Defense Council*

Page No. 1

38279.0202

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*Dennis Hall*  
Operator's Signature

*10/3/03*  
Date



Date: March 26, 2003  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1320

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38279.0202

Action Taken MOTION TO Adopt Amendment

Motion Made By Sen. Nelson Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

38279.0203  
Title.0400

Adopted by Judiciary Committee

March 26, 2003

*JB*  
3-26-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1320

In lieu of the amendments printed on page 892 of the Senate Journal, Engrossed House Bill No. 1320 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to the privacy of autopsy photographs, images, and recordings.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Autopsy Images - Confidential - Exceptions.**

1. An autopsy photograph or other visual image or a video or audio recording of an autopsy is confidential. However, a criminal justice agency may use or disclose these materials for purposes of an investigation or prosecution.
2. a. 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 recording for:
  - (1) Medical or scientific teaching or training purposes;
  - (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; or
  - (5) Publication in a scientific or medical journal or textbook.
- b. A medical examiner, coroner, or physician who has in good faith complied with this subsection is not subject to any penalty or liability for using an autopsy photograph, image, or recording.
3. The decedent's spouse, child, parent, or sibling, 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.
4. Disclosure of an autopsy photograph, image, or recording may be obtained under section 44-04-18.11."

Renumber accordingly

Date: March 26, 2003  
Roll Call Vote #: 3

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1320**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38279.0203

Action Taken Adopt Amendment to change "photo" to "these materials"

Motion Made By Sen. Nelson Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Dennis Bercier  
Operator's Signature

10/3/03  
Date

Date: March 26, 2003  
Roll Call Vote #: 4

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1320**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38279.0203

Action Taken DO PASS AS TWICE AMENDED

Motion Made By Sen. Nelson Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Nelson

If the vote is on an amendment, briefly indicate intent:

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Deanna Hall Smith  
Operator's signature

10/3/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 27, 2003 8:31 a.m.

**Module No: SR-55-5865**  
**Carrier: Nelson**  
**Insert LC: 38279.0203 Title: .0400**

**REPORT OF STANDING COMMITTEE**

**HB 1320, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1320 was placed on the Sixth order on the calendar.**

In lieu of the amendments printed on page 892 of the Senate Journal, Engrossed House Bill No. 1320 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to the privacy of autopsy photographs, images, and recordings.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Autopsy Images - Confidential - Exceptions.**

1. An autopsy photograph or other visual image or a video or audio recording of an autopsy is confidential. However, a criminal justice agency may use or disclose these materials for purposes of an investigation or prosecution.
2. a. 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 recording for:
  - (1) Medical or scientific teaching or training purposes;
  - (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; or
  - (5) Publication in a scientific or medical journal or textbook.
- b. A medical examiner, coroner, or physician who has in good faith complied with this subsection is not subject to any penalty or liability for using an autopsy photograph, image, or recording.
3. The decedent's spouse, child, parent, or sibling, 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.
4. Disclosure of an autopsy photograph, image, or recording may be obtained under section 44-04-18.11."

Renumber accordingly

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*Deanna Hall Smith*  
Operator's Signature

10/3/03  
Date

2003 TESTIMONY

HB 1320

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Deanna Halliwell  
Operator's Signature

10/3/03  
Date



Representative Kim Koppelman  
District 13  
613 First Avenue NW  
West Fargo, ND 58078-1101  
kkoppelm@state.nd.us

## NORTH DAKOTA HOUSE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



COMMITTEES:  
Appropriations

### Testimony on House Bill 1320

Good Morning, Mr. Chairman and Members of the House Judiciary Committee. For your record, I am Representative Kim Koppelman and I represent District 13, which consists of most of the city of West Fargo and a small surrounding rural area.

House Bill 1320 grew out of mounting national concern over the public nature of something as personal as autopsy photos. This problem first came to light, in the wake of the tragic death of race car driver Dale Earnhardt. Apparently, someone took advantage of open records laws in that state to acquire the photos of his autopsy and post them on the internet.

I first visited with the Attorney General about this issue several months ago. After some investigation, he concluded that, under current law, although they are closed during a criminal investigation, after it's completed, autopsy photos would probably be considered open records.

As a former journalist myself, I am a strong supporter of open meetings and open records and am proud of the strong laws we have on the books in North Dakota to ensure open government. I believe I can also assure you, however, that no responsible journalist or member of the public would seek to deepen a families grief by wanton public flaunting of something so sensitive as autopsy photos. As fellow legislators, I trust that you would agree with me that no public information purpose would be served by such activity.

The original draft of this bill inadvertently included the closing of inquests and autopsy records. My intention was not to suggest such a broad change in state law, but only to close autopsy photos, as public records. Accordingly, I've had an amendment drafted, which would accomplish only that. I would encourage the committee's adoption of that amendment.

You'll note that the bill does allow access to autopsy photos by the decedent's immediate family and by law enforcement or by court order. I believe this allows appropriate means to access them, if necessary.

Mr. Chairman and members of the committee, I respectfully request the amendment of House Bill 1320 and a "do pass" recommendation on the bill, when amended. I'd be happy to answer any questions you might have.

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Deanna Hall  
Operator's Signature

10/3/03  
Date

January 20, 2003

HOUSE JUDICIARY COMMITTEE  
HB 1320

CHAIRMAN DEKREY AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We oppose the bill in its current format. It's a solution looking for a problem.

These records have been open records since the early 1900s. I'm not aware of there ever having been a problem or a controversy regarding their use. Reporters use the records in controversial cases to verify cause of death and other circumstances. I'm not sure if there are autopsy photos in every case, but I'm quite certain that no newspaper in the state has ever published such a photo.

There is also some confusion. The bill amends portions of Chapter 11-19, which only covers counties of 8,000 or less. Counties over 8,000 are covered by Chapter 11-19.1, which specifically provides that these records are open (see §11-19.1-08).

We would agree to work with the sponsor to amend this bill to cover photos only, if that is the committee's wish, but basically we would rather urge a DO NOT PASS.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

**§ 11-19.1-08. Records of coroner's office**

It is the duty of the coroner to keep a full and complete record and to fill in the cause of death upon the death certificate in all cases coming under the coroner's jurisdiction. All records must be kept in the office of the coroner, if the coroner maintains an office as coroner, and if the coroner maintains no separate office, then in the office of the recorder of the county, unless the board of county commissioners designates a different official, and must be properly indexed, stating the name, if known, of every deceased person, the place where the body was found, date of death, cause of death, and all other available information required by this chapter. The report of the coroner and the detailed findings of the autopsy, if one was performed, must be attached to the report of every case. The coroner shall promptly deliver or cause to be delivered to the state's attorney of the county in which a death occurred copies of all necessary records relating to every death in which the coroner or state's attorney determines further investigation advisable. The sheriff of the county, the police of the city, or the state highway patrolmen on duty in that county in which the death occurred may be requested to furnish more information or make further investigation by the coroner or the coroner's deputy. The state's attorney may obtain from the office of the coroner copies of records and other information necessary for further investigation. All records of the coroner shall become and remain the property of the county and are public records.





Representative Kim Koppelman  
District 13  
513 First Avenue NW  
West Fargo, ND 58078-1101  
kkoppelm@state.nd.us

## NORTH DAKOTA HOUSE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



COMMITTEES:  
Appropriations

Att #1

### Testimony on House Bill 1320

Good Morning, Mr. Chairman and Members of the Senate Judiciary Committee. For your record, I am Representative Kim Koppelman and I represent District 13, which consists of most of the city of West Fargo and a small surrounding rural area.

House Bill 1320 grew out of mounting national concern over the public nature of something as personal as autopsy photos. This problem first came to light, in the wake of the tragic death of race car driver Dale Earnhardt. Apparently, someone took advantage of open records laws in that state to acquire the photos of his autopsy and post them on the internet.

I first visited with the Attorney General about this issue several months ago. After some investigation, he concluded that, under current law, although they are closed during a criminal investigation, after it's completed, autopsy photos would probably be considered open records.

As a former journalist myself, I am a strong supporter of open meetings and open records and am proud of the strong laws we have on the books in North Dakota to ensure open government. I believe I can also assure you, however, that no responsible journalist or member of the public would seek to deepen a families grief by wanton public flaunting of something so sensitive as autopsy photos. As fellow legislators, I trust that you would agree with me that no public information purpose would be served by such activity.

In the House, concerns about public information access were addressed through amendment.

You'll note that the bill does allow access to autopsy photos by the decedent's immediate family and by law enforcement or by court order. I believe this allows appropriate means to access them, if necessary.

Mr. Chairman and members of the committee, I respectfully request the amendment of House Bill 1320 and a "do pass" recommendation on the bill, when amended. I'd be happy to answer any questions you might have.

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*Donna Hall*  
Operator's Signature

10/3/03  
Date

March 19, 2003

Att #2

SENATE JUDICIARY COMMITTEE  
HB 1320

CHAIRMAN TRAYNOR AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We recognize the concerns behind this bill, and while we don't believe this is a problem in North Dakota, we only want to suggest one amendment...or maybe one and one-half.

We believe that by making these records confidential you are tying the hands of the medical examiners, coroners and other officials who may be conducting these autopsies. We would suggest classifying these records as exempt so the medical examiner has some flexibility in consulting other physicians and officials, other medical centers, etc. This is contained in Amendment #1 below.

Additionally, whether or not you choose to make the records exempt or confidential, I would urge you to add the language to the caption specifying exactly which records are being closed, since other autopsy records will be open. This is Amendment #2 below.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

**#1 - PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1320**

Page 1, line 6, delete "Confidentiality" and insert "Exemption of photographs and video recordings"

Page 1, line 17, delete "confidential and may only" and insert "exempt records, but may"

Renumber accordingly

**#2 - PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1320**

Page 1, line 6, after "Confidentiality" insert "of photographs and video recordings"

Renumber accordingly

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Operator's Signature

*Donna Hall*

10/3/03

Date