

General Government

Defining Autopsy Report and Autopsy Report Release Requirements	
Larimer County	
Preferred Contact:	Commissioner Jody Shaddock-McNally, Chair, Larimer County BOCC, shaddujl@co.larimer.co.us
Co-Sponsoring Counties/Commissioners:	None.
Who is your subject matter expert?	Stephen Hanks J.D. D-ABMDI , Larimer County Coroner, Larimer County, (970)498-6151, hankssk@larimer.org
Has this proposal been approved by your BoCC?	Yes.
Have you reviewed the CCI Instructional Memo?	Yes.
Describe the problem your proposal will solve.	Outdated statute, Lack of existing statute/regulation, Inconsistency with other law and public policy This proposal seeks to solve many issues that coroner offices face when autopsy reports and other investigative documents in the coroners' case files are requested. (1) It will define autopsy report in accordance with the national standard which Colorado law follows for the performance of autopsies; (2) it will outline how autopsy reports are released and how coroners protect private information within autopsy reports; and (3) it will state how other documents within coroner case files are to be reviewed as criminal justice records. C.R.S. 30-10-606.5 relies on the national standard for who performs autopsies and how autopsies are performed which includes everything from beginning the autopsy to the final written autopsy report. The current definition at C.R.S. 30-10-606.7 does not align with this national practice standard. The current definition is found within the statute only discussing autopsies of minors but is being applied outside of that statute to request additional documents and photographs for autopsies performed on deceased adults. When releasing autopsy reports there is no standard between coroner offices in Colorado. Some offices heavily redact information, some minimally redact information, some deny release completely under a variety of circumstances, and some redact nothing and release full reports.

	There is significant confusion about what is releasable and what is protected information when it comes to health care, especially surrounding confidentiality of reproductive health and behavioral health information. There are laws and strong public policy supporting confidentiality and protection of PHI and PII, but nothing protecting that information within autopsy reports, creating a loophole and allowing protected information to flow freely into the public. Additionally, the 1974 case law which is the controlling law making autopsy reports public record, noted that those ""autopsy reports sought contain only medical information relevant to a determination of the cause of death."" This is not so today. Autopsy reports today are much more in-depth and detail every bodily system and organ, to include reproductive systems and presence of contraceptive devices and operations. Finally, coroners understand that autopsy reports are public records, but coroners do not know how the rest of their case files are viewed. There is argument for all other coroner files to be criminal justice records allowing for a balancing test and review before allowing or denying inspection, and this is supported in the same 1974 case law which distinguishes ""coroner's files"" from the ""autopsy report itself."" However, just like denying or releasing autopsy reports, every coroner has a different understanding of what to do. The Larimer County Coroner's Office has heard from families over the years regarding the release of autopsy reports as provided below: The family member did not understand why the Coroner's Office was able to release the autopsy report. The member was informed that in Colorado, the autopsy report is public record. The family member was surprised by this and had no idea that this was law and inquired about HIPAA regulations. The family member was informed that state statute allows the autopsy report to be a public record. A family member of a deceased individual was upset and did not understand how the Coroner's Office could send autopsy reports to anyone requesting them. They were upset that the autopsy mentioned her family member was "severely depressed". The medical examiner included "medical history significant for depression". The family member was informed that records like that can be included if seen in medical records.
Areas of Impact:	Day-to-day operations of the county, Functionality of county programs or services, Power/Authority/Mandate of county government, General community advancement
What is the ultimate source of this problem?	Outdated statute, Lack of existing statute/regulation, Inconsistency with other law and public policy

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What is your initial proposal to solve this problem?	The bill will define Autopsy Report as follows and place it in C.R.S. 30-10-600.3 Definitions: ""AUTOPSY REPORT"" MEANS THE REPORT OF AN EXAMINATION AND DISSECTION OF A DEAD BODY BY A PHYSICIAN FOR THE PURPOSE OF DETERMINING THE CAUSE, MECHANISM, OR MANNER OF DEATH. BUT AUTOPSY REPORT DOES NOT INCLUDE ANY WRITTEN ANALYSIS, DIAGRAM, PHOTOGRAPH, TOXICOLOGICAL REPORT, OR INVESTIGATIVE REPORT, WHICH SHALL BE ASSESSED UNDER PART 3, ARTICLE 72 OF TITLE 24. This definition will eliminate and replace the definition in C.R.S. 30-10-606.7(1)(a). This new definition will apply to all forensic autopsy reports prepared at the request of the coroner. This new definition uses the definition of Autopsy as defined in the ""Forensic Autopsy Performance Standards"" adopted by the National Association of Medical Examiners, which also dictates how autopsies are performed (see C.R.S. 30-10-606.5(1)(a)). The bill will retitle C.R.S. 30-10-606.7 as Autopsy Reports – confidentiality and release of information. The bill will remove the Autopsy Report definition as used here. All provisions relating to the confidentiality and non-public record status of autopsy reports on minors will not be changed or affected. The bill will add language to C.R.S. 30-10-606.7 directing coroners to redact protected health information and personally identifiable information not directly associated with the immediate cause and manner of death. This includes reproductive healthcare and mental/behavioral health information that is protected throughout other laws and supported with strong public policy statements. As an example, our Autopsy Report release policy stated: Redactions will include date of birth, identifying marks, medical history not associated with the immediate cause of death, mental and behavioral

	health history, reproductive healthcare history and descriptions of reproductive organs, sociological information, and/or scholastic achievement data which is protected by Colorado Open Records Act and HIPAA. The bill will apply C.R.S. 30-10-606.7(2)(b) to all autopsy report requests and include legal next-of- kin as another individual permitted to receive the full unredacted autopsy report.
Please provide sample language for this solution.	C.R.S. 30-10-600.3 Definitions (1) ""AUTOPSY REPORT"" MEANS THE REPORT OF AN EXAMINATION AND DISSECTION OF A DEAD BODY BY A PHYSICIAN FOR THE PURPOSE OF DETERMINING THE CAUSE, MECHANISM, OR MANNER OF DEATH. BUT AUTOPSY REPORT DOES NOT INCLUDE ANY WRITTEN ANALYSIS, DIAGRAM, PHOTOGRAPH, TOXICOLOGICAL REPORT, OR INVESTIGATIVE REPORT, WHICH SHALL BE ASSESSED UNDER PART 3, ARTICLE 72 OF TITLE 24. C.R.S. 30-10-606.7 Autopsy reports - confidentiality and release of information (1) As used in this section, unless the context otherwise requires: (a)DELETE [""Autopsy report"" means the report of the coroner or the coroner's designee on the post-mortem examination of a deceased individual to determine the cause or manner of death, including any written analysis, diagram, photograph, or toxicological test results.] (2)(b) ADD ""Legal next-of-kin"" (3)(a) DELETE [(IV) Name of the deceased minor.] (5) Notwithstanding any other provision of this section, upon written request by any individual, a coroner shall release an autopsy report. Before releasing an autopsy report pursuant to subsection (5)(a) of this section, the coroner shall redact information not relevant to the determination of the immediate cause and manner of death, and information that is confidential or protected from public disclosure pursuant to article 72 of title 24, or any other applicable state or federal law.
Are there any solutions that do not require state-level legislation?	No

Has your county explored these alternatives?	
Has CCI or any other organizations sought a solution to this problem before?	Not to our knowledge, no
What possible organization(s) would support your proposed solution?	Colorado Coroners Association and individual coroners offices (I have heard support from Denver, Boulder, and Weld Coroners)
What possible organization(s) would oppose your proposed solution?	Operation Rescue Kansas; CFOIC and other CORA/FOIA or media groups wanting full access to reports and information
Have you spoken with any legislators about your proposed solution? If so, what was their response?	Working on it, but none confirmed yet
What are the financial implications of this problem to your county? Are there any financial implications to this solution either?	It could reduce staff time spent and capacity for answering questions from the public and less time spent in court trying to protect privacy for families.
What are the financial implications of this problem to any other impacted parties? What are the financial implications of this solution to any other impacted parties? <i>Please consider any relevant Colorado State Departments.</i>	Same as above, we cannot think of any significant costs to impacted parties It could reduce staff time spent and capacity for answering questions from the public and less time spent in court trying to protect privacy for families.
Staff Feedback	<u>Risk / Difficulty:</u> <u>Time Commitment:</u>