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NEW YORK CONSOLIDATED LAW SERVICE

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*** Current through 2015 released chapters 1-13, 50-54, 61 ***

County Law

Article 17-A Coroner, Coroner's Physician and Medical Examiner

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NY CLS County § 677 (2015)

§ 677. Records; reports

1. The writing made by the coroner, or by the coroner and coroner's physician, or by the medical examiner, at the place where he takes charge of the body, shall be filed promptly in the office of the coroner or medical examiner. The testimony of witnesses examined before him and the report of any examination made or directed by him shall be made in writing or reduced to writing and thereupon filed in such office.

2. The report of any autopsy or other examination shall state every fact and circumstance tending to show the condition of the body and the cause and means or manner of death. The person performing an autopsy, for the purpose of determining the cause of death or means or manner of death, shall enter upon the record the pathological appearances and findings, embodying such information as may be prescribed by the commissioner of health, and append thereto the diagnosis of the cause of death and of the means or manner of death. Methods and forms prescribed by the commissioner of health for obtaining and preserving records and statistics of autopsies conducted within the state shall be employed. A detailed description of the findings, written during the progress of the autopsy, and the conclusions drawn therefrom shall, when completed, be filed in the office of the coroner or medical examiner.

3. (a) The coroner or coroners of each county, or the medical examiner, shall keep full and complete records, properly indexed, stating the name, if known, of every person whose death is investigated, the place where the body was found, the date of death, if known, and if not known, the date or approximate date as determined by the investigation, to which there shall be attached the original report of the coroner, or coroner and coroner's physician or physician employed, or medical examiner, and the detailed findings of the autopsy, if any. Such records shall be kept in the office of the county clerk except in those counties having a full-time coroner or medical examiner, in which case such records shall be kept in the office of the coroner or medical examiner.

(b) Such records shall be open to inspection by the district attorney of the county. Upon application of the personal representative, spouse or next of kin of the deceased to the coroner or the medical examiner, a copy of the autopsy report, as described in subdivision two of this section shall be furnished to such applicant. Upon proper application of any person who is or may be affected in a civil or criminal action by the contents of the record of any

investigation, or upon application of any person having a substantial interest therein, an order may be made by a court of record, or by a justice of the supreme court, that the record of that investigation be made available for his inspection, or that a transcript thereof be furnished to him, or both.

4. The coroner, coroner's physician or medical examiner shall promptly deliver to the district attorney copies of all records pertaining to any death whenever, in his opinion, or in the judgment of the person performing the autopsy, there is any indication that a crime was committed.

5. The coroner, coroner's physician or medical examiner shall promptly report to the commissioner of motor vehicles, in a form and manner specified by the commissioner, the results of all quantitative tests for alcohol, and for any trace of a controlled substance, as defined in section three thousand three hundred six of the public health law, that the coroner, coroner's physician or medical examiner has reasonable cause to believe is present, performed upon bodies of victims of motor vehicle accidents pursuant to the requirements of subdivision three of section six hundred seventy-four of this chapter.

6. The coroner, coroner's physician or medical examiner shall promptly provide the chairman of the correction medical review board and the commissioner of correctional services with copies of any autopsy report, toxicological report or any report of any examination or inquiry prepared with respect to any death occurring to an inmate of a correctional facility as defined by subdivision three of section forty of the correction law within his county; *and shall promptly provide the executive director of the justice center for the protection of people with special needs with copies of any autopsy report, toxicology report or any report of any examination or inquiry prepared with respect to the death of any service recipient occurring while he or she was a resident in any facility operated, licensed or certified by any agency within the department of mental hygiene, the office of children and family services, the department of health or the state education department.* If the toxicological report is prepared pursuant to any agreement or contract with any person, partnership, corporation or governmental agency with the coroner or medical examiner, such report shall be promptly provided to the chairman of the correction medical review board <1>, the commissioner of correctional services *or the executive director of the justice center for people with special needs, as appropriate*, by such person, partnership, corporation or governmental agency.

7. (a) Upon the written request of the commissioner of mental health, the commissioner of <1> *the office for persons with developmental disabilities*, the director of the mental hygiene legal service, <2> *the executive director of the justice center for the protection of people with special needs* or the director of a mental hygiene facility, as defined in subdivision two of section <3> *five hundred fifty* of the <4> *executive law*, at which the deceased was a patient or resident, the coroner, coroner's physician or medical examiner shall provide such person with a copy of all reports and records, including, but not limited to, autopsy reports and toxicological reports related to the deceased prepared by a person, partnership, corporation or governmental agency pursuant to any agreement or contract with the coroner or medical examiner with respect to the death of a patient or resident receiving services <5> at such a mental hygiene facility.

(b) Upon the written request of the commissioner of mental health, or commissioner of <1> developmental disabilities, or a director of a departmental facility as defined in *section 1.03 of the mental hygiene law*, or the <2> *executive director of the justice center for the protection of people with special needs*, the coroner, coroner's physician or medical examiner shall transmit to the commissioner, or such director, <3> or any member of the <4> *justice center medical review board* <5>, original autopsy slides, tissue materials and specimens taken from the body of a deceased patient or resident as defined in paragraph (a) of this section. Such original materials may be used and tested by such office of the department of mental hygiene, or such director, and <6> *justice center medical review board* pursuant to its authority under section <7> *five hundred fifty-six* of the <8> *executive law*. Such slides, materials and specimens may be retained for a reasonable time, and shall be returned to the office of the coroner or medical examiner in good condition allowing for reasonable use for study and testing purposes.

8. The coroner, coroner's physician or medical examiner shall promptly, but in no event later than sixty days from

the date of death, absent extraordinary circumstances, provide the office of children and family services with copies of any autopsy report, toxicological report or any report of any examination or inquiry prepared with respect to any death occurring to a child whose care and custody or custody and guardianship has been transferred to an authorized agency, a child for whom child protective services has an open case, a child for whom the local department of social services has an open preventive services case, or a child reported to the statewide central register of child abuse and maltreatment. If the toxicological report is prepared pursuant to any agreement or contract with any person, partnership, corporation or governmental agency with the coroner or medical examiner, such report shall be promptly, but in no event later than sixty days from the date of death, absent extraordinary circumstances, provided to the office of children and family services by such person, partnership, corporation or governmental agency. Where the death involves a child reported to the statewide central register of child abuse and maltreatment, the reports referred to in this subdivision shall also be promptly, but in no event later than sixty days from the date of death, absent extraordinary circumstances, provided to the local child protective service investigating the report pursuant to section four hundred twenty-four of the social services law.

9. When required for official purposes of the state department of health, the state commissioner of health or his or her designee may request copies of all reports and records related to a death, including, but not limited to, autopsy reports and toxicology reports. Upon receipt of the written request of the state commissioner of health or his or her designee, a coroner, coroner's physician or medical examiner, shall, within three business days of their completion, provide to such commissioner or his or her designee a copy of all reports and records, including, but not limited to, autopsy reports and toxicology reports related to the death.

HISTORY:

Add, L 1965, ch 545, § 3, eff Sept 1, 1965; amd, L 1971, ch 740, § 2; L 1974, ch 800, § 2; L 1975, ch 226, § 1, eff July 1, 1975; L 1976, ch 764, § 3; L 1978, ch 266, § 1; L 1979, ch 477, § 4, eff July 5, 1979; L 1980, ch 339, § 1, eff June 19, 1980; L 1981, ch 212, § 3; L 1987, ch 89, § 2, eff April 1, 1988; L 1987, ch 491, § 3, eff July 30, 1987; L 1993, ch 330, § 7, eff April 1, 1994; L 1999, ch 136, § 10 (see 1999 note below); L 2006, ch 485, § 4, eff Dec 14, 2006; L 2010, ch 56, § 1 (Part NN), eff June 22, 2010; L 2012, ch 501, § 1 (Part C), eff June 30, 2013 (see 2012 note below).

NOTES:

Editor's Notes:

Laws 1999, ch 136, § 11, eff June 30, 1999, provides as follows:

§ 11. This act shall take effect June 30, 1999; notwithstanding any other provision of law to the contrary, the office of children and family services shall have the authority to promulgate regulations on an emergency basis for the purpose of implementing the provisions of this act.

Laws 2012, ch 501, § 1, eff Dec 17, 2012, provides as follows:

Section 1. This act shall be known and may be cited as the "protection of people with special needs act".

Amendment Notes:

2012. Chapter 501, § 1 (Part C) amended:

Sub 6 by deleting at fig 1 "and to" and adding the matter in italics.

Sub 7, par (a) by deleting at fig 1 "mental retardation and", at fig 2 "the chairman of the commission on quality of care for the mentally disabled", at fig 3 "45.01", at fig 4 "mental hygiene", at fig 5 "for a mental disability" and adding the matter in italics.

Sub 7, par (b) by deleting at fig 1 "mental retardation and", at fig 2 "chairman of the commission on quality of care for the mentally disabled", at fig 3 "or chairman,", at figs 4, 6 and 8 "mental hygiene", at fig 5 "designated by the chairman of such commission", at fig 7 "45.17" and adding the matter in italics.

2010. Chapter 56, § 1 (Part NN) amended:

By adding sub 9.

Cross References:

This section referred to in CLS *Men Hyg* § 33.16; CLS *Pub Health* § 18.

Definitions, CLS *Correc* § 40; CLS *Men Hyg* §§ 1.03, 45.01.

Functions, powers and duties of the board, CLS *Men Hyg* 45.17.

Jurisprudences:

26 *NY Jur 2d Counties, Towns, and Municipal Corporations* §§ 649, 650, 656, 657, 659 .

92 *NY Jur 2d Records and Recording* § 29 .

18 *Am Jur 2d, Coroners or Medical Examiners* §§ 15, 16.

Texts:

5 Frumer & Biskind, *Bender's New York Evidence--CPLR* §§ 19.03, 23.25.

New York Insurance Law (Matthew Bender's New York Practice Series) § 33.02[8].

CASE NOTES 1. In general 2. Jurisdictional limits 3. Substantial interest in records 4. Freedom of information law 5. Rights of criminal defendants 6. Keeping of records

1. In general

In reading *County Law* § 674, subd 3(b) together with *County Law* § 677, subds 3(1)(b)(1), and 5, the natural interpretation follows that the autopsy report generally can be made available in litigation with the exception of the alcohol analysis part of it which is separately barred from litigation and is only to be sent to the commissioner so that statistics might be compiled. *Cook v Nassau*, 33 *N.Y.2d* 7, 347 *N.Y.S.2d* 165, 300 *N.E.2d* 706, 1973 *N.Y. LEXIS* 1072 (*N.Y. 1973*).

Reports of blood and urine tests conducted by coroner on deceased motorcycle operator pursuant to *County Law* § 674, subd 3(b)(1) to determine alcohol content, which tests were expressly excluded from evidence by *County Law* § 674, subd 3(b)(1), were inadmissible in decedent's lawsuit against city, despite *County Law* § 677, subd 3(b), which authorizes a judge to obtain the reports of such tests for his examination. *Cook v Nassau*, 33 *N.Y.2d* 7, 347 *N.Y.S.2d* 165, 300 *N.E.2d* 706, 1973 *N.Y. LEXIS* 1072 (*N.Y. 1973*).

A court may order the release of a record to any person who is or may be, affected in a civil or criminal action by the contents of the record of any investigation of an autopsy; the spouse of an incarcerated inmate was entitled to access to autopsy records which may have been the basis for a criminal appeal. *Pennington v Clark*, 194 *Misc. 2d* 381, 755 *N.Y.S.2d* 195, 2002 *N.Y. Misc. LEXIS* 1737 (*N.Y. Sup. Ct. 2002*).

2. Jurisdictional limits

In murder trial in New York County, petitioner was not entitled to copy of victim's autopsy report pursuant to CLS *County* § 677(3)(b) since CLS *County* § 2 places New York County, which is wholly contained within New York City, beyond jurisdictional reach of County Law absent contrary provision. *Scott v Chief Medical Examiner*, 179 *A.D.2d* 443, 577 *N.Y.S.2d* 861, 1992 *N.Y. App. Div. LEXIS* 141 (*N.Y. App. Div. 1st Dep't*), app. denied, 79 *N.Y.2d* 758, 584 *N.Y.S.2d* 446, 594 *N.E.2d* 940, 1992 *N.Y. LEXIS* 1277 (*N.Y. 1992*), app. denied, 79 *N.Y.2d* 758, 584 *N.Y.S.2d* 446, 594 *N.E.2d* 940 (*N.Y. 1992*), cert. denied, 506 *U.S.* 891, 113 *S. Ct.* 259, 121 *L. Ed. 2d* 190, 1992 *U.S. LEXIS* 6116 (*U.S. 1992*).

Petitioner, who was convicted of second degree murder, was not entitled to disclosure under Freedom of

Information Law of records of New York City medical examiner from investigation into death of murder victim on basis of provision of CLS *County* § 677(3)(b) that person with substantial interest in records of medical examiner was entitled to inspect records since statute did not apply to New York County in light of CLS *County* § 2(a). *Mullady v Bogard*, 153 Misc. 2d 1018, 583 N.Y.S.2d 744, 1992 N.Y. Misc. LEXIS 149 (N.Y. Sup. Ct. 1992).

3. Substantial interest in records

Applicant seeking inspection of autopsy reports of medical examiner under CLS *County* § 677(3)(b) did not need to show "direct and personal interest" in records since, by creating residual category of persons who may receive autopsy reports--anyone who can show "substantial interest" in records--legislature did not intend to limit access only to the 3 enumerated classes of persons, or persons who have direct and personal interest in records. *Diaz v Lukash*, 82 N.Y.2d 211, 604 N.Y.S.2d 28, 624 N.E.2d 156, 1993 N.Y. LEXIS 3897 (N.Y. 1993).

In determining whether "substantial interest" has been shown by applicant seeking inspection of autopsy reports of medical examiner under CLS *County* § 677(3)(b), court should consider, among other things, reason records are sought, importance of reason, and availability of information from other sources; assuming applicant's interest is substantial, court may then consider other factors--for example, confidentiality concerns--as part of its discretionary power under statute. *Diaz v Lukash*, 82 N.Y.2d 211, 604 N.Y.S.2d 28, 624 N.E.2d 156, 1993 N.Y. LEXIS 3897 (N.Y. 1993).

Applicant seeking inspection of autopsy reports of medical examiner under CLS *County* § 677(3)(b) established requisite substantial interest in records by showing that they might enable applicant to show that he was convicted and sentenced to death for murders that did not occur, and that such potentially valuable information was unavailable elsewhere. *Diaz v Lukash*, 82 N.Y.2d 211, 604 N.Y.S.2d 28, 624 N.E.2d 156, 1993 N.Y. LEXIS 3897 (N.Y. 1993).

Hospital was entitled to receive copies of autopsy reports prepared by county medical examiner regarding patients who died while confined to that hospital when attending physician was unable to certify cause of death since educational value of autopsy reports under such circumstances constitutes "substantial interest" within meaning of CLS *County* § 677(3)(b), and disclosure to hospital does not implicate privacy concerns given hospital's requirement of confidentiality. *Cent. Gen. Hosp., Inc. v Lukash*, 140 A.D.2d 113, 532 N.Y.S.2d 527, 1988 N.Y. App. Div. LEXIS 9168 (N.Y. App. Div. 2d Dep't 1988), aff'd, 74 N.Y.2d 619, 541 N.Y.S.2d 979, 539 N.E.2d 1107, 1989 N.Y. LEXIS 524 (N.Y. 1989).

4. Freedom of information law

Newspaper and its reporter were not entitled, under Freedom of Information Law, to compel county to disclose autopsy reports which contained identities and blood-alcohol content of victims involved in alcohol-related traffic fatalities since CLS *County* § 677 restricts inspection of autopsy reports, and newspaper and reporter failed to show that they had "substantial interest" in reports, despite desire to publish articles on dangers of drinking and driving. *Herald Co. v Murray*, 136 A.D.2d 954, 524 N.Y.S.2d 949, 1988 N.Y. App. Div. LEXIS 1292 (N.Y. App. Div. 4th Dep't 1988).

Disclosure of MV-105 forms, which county medical examiner submits to Commissioner of Motor Vehicles under CLS *County* § 677(5), is governed by CLS *County* § 677(3)(b), and thus is not permitted under Freedom of Information Law absent showing of "substantial interest" by party requesting disclosure. *Herald Co. v Murray*, 136 A.D.2d 954, 524 N.Y.S.2d 949, 1988 N.Y. App. Div. LEXIS 1292 (N.Y. App. Div. 4th Dep't 1988).

Defendant was not entitled, under Freedom of Information Law, to obtain copies of autopsy reports and laboratory analyses of evidence relating to police officers' criminal investigation of homicides for which defendant was charged, where (1) CLS *County* § 677 governed disclosure of autopsy reports and no county officers were made parties to proceeding, and (2) other reports and evidence were compiled for law enforcement purposes and, if disclosed, would reveal nonroutine criminal investigative techniques or procedures. *Lyon v Dunne*, 180 A.D.2d 922, 580 N.Y.S.2d 803, 1992 N.Y. App. Div. LEXIS 2694 (N.Y. App. Div. 3d Dep't), app. denied, 79 N.Y.2d 758, 584 N.Y.S.2d 446, 594 N.E.2d

940, 1992 N.Y. LEXIS 1270 (N.Y. 1992).

Autopsy reports, which are available as of right only to district attorney and next of kin under CLS County § 677, are exempt from disclosure under Freedom of Information Law even if they are maintained by law enforcement agency, such as State Commission of Correction, rather than coroner or medical examiner. Comm on Open Gov't F7974.

5. Rights of criminal defendants

The relief provided by Article 17-A was never intended to enable a criminal defendant to discover evidence by way of a civil proceeding which he would not be entitled to in the criminal action against him. *Widziewicz v Golding*, 52 Misc. 2d 837, 277 N.Y.S.2d 62, 1966 N.Y. Misc. LEXIS 1180 (N.Y. County Ct. 1966).

A defendant under indictment for first degree murder, who had received an autopsy report concerning the victim's death, was not entitled to disclosure of investigation reports and tests of portable objects and of depositions of witnesses taken by the medical examiner, since only the District Attorney had the right to inspect the records kept on file in the office of the medical examiner and anyone else seeking to inspect those records must apply for a court order, the issuance of which lies within the sound discretion of the court. *Widziewicz v Golding*, 52 Misc. 2d 837, 277 N.Y.S.2d 62, 1966 N.Y. Misc. LEXIS 1180 (N.Y. County Ct. 1966).

In a prosecution for the murder of a newborn child, defendants would be entitled to a transcript of so much of the coroner's investigation contained clinical and pathological findings made during the actual autopsy of the infant under County Law § 677 for their use at the felony hearing. *People v Casey*, 114 Misc. 2d 589, 452 N.Y.S.2d 160, 1982 N.Y. Misc. LEXIS 3525 (N.Y. Sup. Ct. 1982).

6. Keeping of records

Assuming that *section 677(3) of the County Law* is a "general law" as that term is defined in the Municipal Home Rule Law, Broome County may not adopt a local law designating an office other than the coroner's office as custodian of coroner's records. It may do so, however, after the effective date of the Broome County Charter (January 1, 1968). 1967 Ops St Compt File #508. Agency Opinions

1. In general

Records of investigations of death by a coroner or medical examiner, including reports of an autopsy, are not public records, may be inspected by the district attorney only and by all others only by court order. 1968 NY Ops Atty Gen Jan 10.

The Rockland County Medical Examiner may properly refuse to supply autopsy reports requested by the officials of a State institution concerning deaths of patients therein occurring within his jurisdiction. Such documents are not public records within the meaning of *Public Officers Law*, § 66 and are not available for inspection except under the statutorily described circumstances. 1972 NY Ops Atty Gen July 10.

The State Commissioner of Health is empowered to obtain information contained in the records of coroners or medical examiners, which is necessary to further the conduct of a scientific study or research. 1977 NY Ops Atty Gen Dec 13 (Formal).

CLS County § 677(3)(b) governs availability of autopsy reports subject to any federal requirements that apply because of ongoing federal investigation. 1996 NY Ops Atty Gen I 96-42.

Records of investigations of deaths, requested after investigations were closed, would be subject to CLS County § 677 to extent that files contained autopsy reports and "writings" of coroner or medical examiner, and to that extent they were available only to district attorney and deceased's next of kin; however, records prepared by police departments that

came into possession of coroner or medical examiner were subject to Freedom of Information Law. Comm on Open Gov't FOIL-AO-10030.

2. Freedom of information law

Freedom of Information Law is inapplicable as basis for seeking or obtaining autopsy report or other records described in *CLS County § 677(3)(b)*; however, while only district attorney and next of kin of deceased have right of access to records subject to § 677 and any others would be required to obtain court order based on showing of substantial interest in records sought to gain right of access, § 677 does not specify that disclosures are prohibited. Comm on Open Gov't FOIL-AO-12019.

Freedom of Information Law is inapplicable as basis for seeking or obtaining autopsy report or other records described in *CLS County § 677*. Comm on Open Gov't FOIL-AO-13080.

Autopsy photographs taken, not by Associate Medical Examiner, but rather by State Police Investigator, might not fall under restrictions imposed by *CLS County § 677*; if § 677 applies, court order would ordinarily be required to gain access to such records, but if § 677 does not apply, Freedom of Information Law would govern rights of access. Comm on Open Gov't FOIL-AO-13080.

Freedom of Information Law is inapplicable as basis for seeking or obtaining autopsy report or other records described in *CLS County § 677*. Comm on Open Gov't OML-AO-3158.

3. Rights of criminal defendants

CLS County § 677 does not include, within its coverage, photographs of public employees taken for identification purposes. Comm on Open Gov't FOIL-AO-12829.

4. Keeping of records

Records of medical examiner may not be destroyed without the consent of the Commissioner of Education. 1978 NY Ops Atty Gen July 19.

Records of autopsies performed by a coroner or medical examiner on a patient in a hospital are required to be filed in the coroner's or medical examiner's office and are available for inspection only under narrowly defined circumstances. These records do not become part of the hospital's patient records. N.Y. Op. Att'y Gen. No. 84-46.